

GERMANY



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Changes to oppositions explained

Several rules of the German Patent Act with regard to oppositions have recently been amended. In order to reduce the backlog of the German Patent and Trade Mark Office (GPTO) in opposition cases, transitional rules were implemented in 2002 that oppositions against German patents filed up to July 2006 have to be handled by the Federal Patent Court instead of by the GPTO. These rules have now been cancelled, so that all oppositions filed from July 1 2006 will again be handled in the first instance by the GPTO.

However, according to the new rules an Appeal Senate of the Federal Patent Court may still handle oppositions if one of the parties files a corresponding request to accelerate the opposition and none of the other parties contradicts it within two months. Such a request may also be filed from 15 months after the expiry of the opposition period by any party without the consent of the others. An additional office fee of €300 must be paid for such a request. With this, relatively fast proceedings and a quick decision in first instance oppositions against a German patent should still be available, if any one of the parties wants to pay for the acceleration.

Furthermore, the unique possibility in German patent law to divide a granted patent in opposition proceedings has been abolished by the legislator. Up to July 1 2006 the patentee could declare a division of the patent until the end of the opposition procedure, and file a corresponding divisional application within three months. This has been a powerful tool for the patentee to safeguard his patent rights, for example in cases where the patent went down in the opposition for formal reasons. Regrettably, with this law change one of the few peculiarities of German patent law still left after the various steps in the harmonization of European IP law has vanished.