

Statistics on EPO oppositions

The European Patent Office (EPO) has recently published its statistics for opposition and appellate activities in 2005.

After grant, there is a nine-month window in which a person may file centrally at the EPO a notice of opposition to a European patent, alleging that it was wrongly granted. Such *inter partes* proceedings are becoming relatively common because they provide an economical way of removing an obstacle to a planned commercial activity in a substantial market place.

In 2005, oppositions were filed against 5.4% of granted patents, compared with a rate of 5.3% in 2004. Fewer oppositions were filed in 2005 (2,960) than in 2004 (3,100), reflecting a slight fall in the number of patents granted over the same period.

Of the 2,330 opposition cases decided at first instance in 2005, patent revocation was ordered in about 38% of cases, maintenance of the patent in amended form was ordered in about 32% of cases, and the opposition was rejected in about 30% of cases.

Appeals were filed against 943 decisions by the Opposition Division in 2005, compared with 873 appeals in 2004. The distribution of these new appeal cases filed in 2005 between the various Technical Boards of Appeal was as follows: 41% Mechanical, 44% Chemical, 6% Physical, and 9% Electrical.

In 2005, the Technical Boards of Appeal decided 873 opposition cases. Of these, about 63% were successful (in whole or in part), with orders made as follows: maintenance of the patent as granted or in amended form in 3% and 28% of cases, respectively; revocation of the patent in 20% of cases; and resumption of opposition proceedings in 12% of cases.

The average duration of appeal proceedings pursuant to *inter partes* disputes before the EPO in 2005 was 31 months.

As can be seen from these statistics, opposition proceedings are becoming more prevalent in Europe and form part of a significant number of cases. It is therefore important for patent applicants in Europe to bear this in mind and to work with their advisers to try to assess the likelihood of the grant of their patent being challenged.

It is also worth bearing in mind the potential value of oppositions as a business tool. It is relatively inexpensive to file an opposition, but it can have the effect of removing a patent which blocks a technology area of interest, restricting the scope of an overly broad patent or simply provoking licensing discussions with the patentee. Thus, the offensive value of oppositions in Europe should not be overlooked.



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