



DANISH PATENT AND TRADEMARK OFFICE

# Invalidation of patents by administrative procedure:

行政程序的专利失效

- **Opposition** 异议
- **Administrative Re-examination**  
行政在再次复审
- **Board of Appeal**  
复审委员会

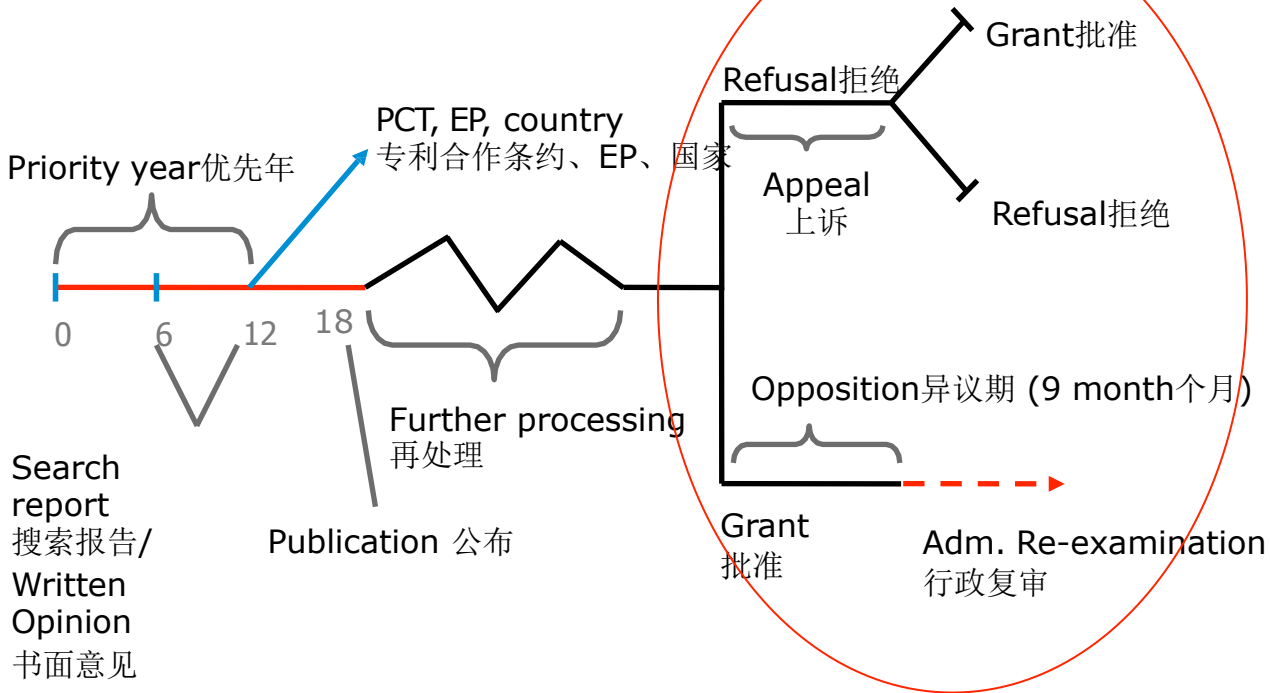
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# DANISH PATENT AND TRADEMARK OFFICE

## Patent process 专利申请过程

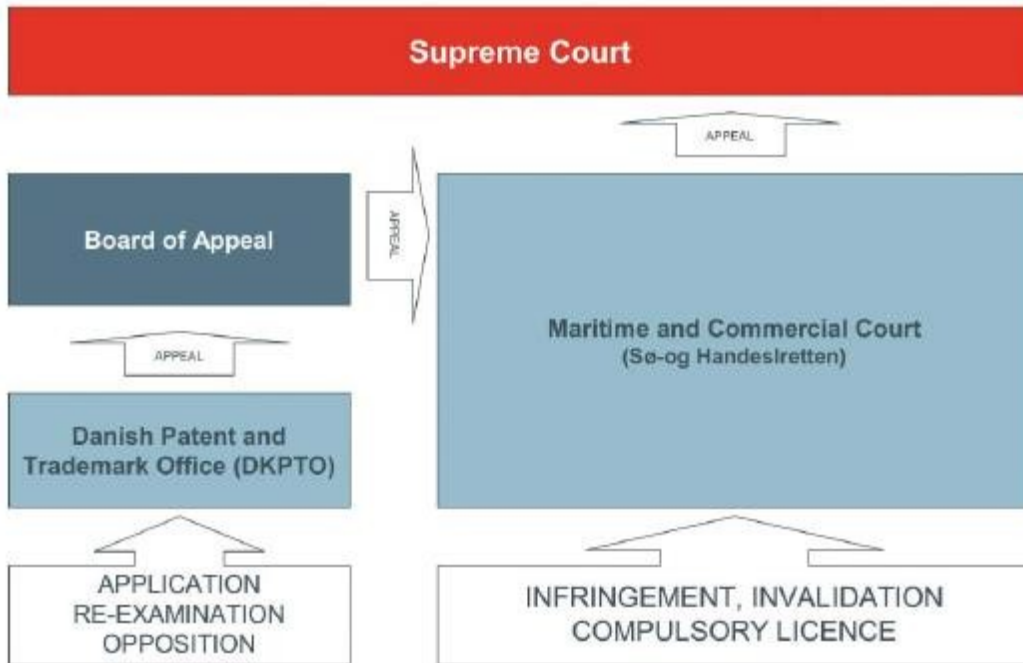




## DANISH PATENT AND TRADEMARK OFFICE

### Overview: Denmark's Judicial Patent System

丹麦司法专利体制一目了然





## DANISH PATENT AND TRADEMARK OFFICE

# Opposition (Patents Act, section 21)

## 异议（专利法第21条）

- May be filed by anyone before lapse of **9 months** from announcement of the patent 可由任何人在公布专利后9个月提出
- Only against patents granted by the DKPTO (not European patents) 只能针对丹麦专利商标局批准的专利（而不欧洲专利）

### Grounds理由:

- Sections 1 and 2 not fulfilled (industrial application, novelty, inventive step) 不符合第1、2条（工业应用、新颖性、创造性）
- The invention is not disclosed in a manner sufficiently clear to enable a person skilled in the art to carry out the invention 发明指公布不够清楚，不允许见多识广的人复制发明
- Subject-matter of the claims extends beyond the contents of the application as filed 诉求中的议题范围超过提交的申请

### The opposition "package" 异议需提供的文件:

- Grounds, explanations + documentation (patents, photos, brochures, invoices, declarations etc.) 理由、说明、资料（专利、照片、手册、账单、声明等）
- In principle: All evidence shall be filed with opposition 原则上：所有证据该与提交异议案同事提交
- (DKPTO may bring in new documentation at its own motion) （丹麦专利商标局可以自身提出新的资料）



DANISH PATENT AND TRADEMARK OFFICE

## Administrative Re-examination (Patents Act, section 53b) 行政复审（专利法第53b条）

### About Administrative Re-examination 行政复审概要:

- Both patent owner and third party can file a request 权利人及第三方皆可提出相关要求
- Can be brought forward against Danish patents including European Patents validated in Denmark 针对丹麦专利及在丹麦获批准的欧洲专利
- Must be filed after expiry of the opposition period/after an eventual processing of an opposition 必须在异议期结束后或异议程序完毕后提交
- Request will be stalled if court case regarding patent is pending 若有同一专利相关的待定决定法院诉讼

### Request from Patent owner 权利人诉求(=request for limitation 限制诉求):

- No grounds required, only a request including a text for limitation of patent 不需任何理由，只要提供包含专利限制文字诉求
- Examine whether limitation is accepted 审查是否接受限制
  - Limitation not accepted 不接受=>request is refused 诉求遭拒
  - Limitation accepted 接受限制=>patent maintained amended 维持修订专利



## DANISH PATENT AND TRADEMARK OFFICE

# Re-examination from third party 第三方重新审查

### Grounds 理由:

- Sections 1 and 2 not fulfilled (industrial application, novelty, inventive step) 不符合第1、2条（工业应用、新颖性、创造性）
- The invention is not disclosed in a manner sufficiently clear to enable a person skilled in the art to carry out the invention 发明公布得不够清楚，不允许见多识广的人复制发明
- Subject-matter of the claims extends beyond the contents of the application as filed 诉求中的议题范围超过提交的申请
- the protection conferred by the patent has been extended after the Patent Authority has notified the applicant that patent will be granted. 经过专利获得的保护在专利局通知申请人专利将被批准得到延长

### The Re-examination "package" 重新审查需提供的文件:

- Grounds, explanations + documentation (patents, photos, brochures, invoices, etc.) 理由、说明+资料（专利、照片、手册、账单等）
- In principle: All evidence shall be filed with opposition 原则上：所有证据该与提交异议案同时提交
- (New documentation found by us can be used) （我们额外遇到新的文件也可以使用）



## DANISH PATENT AND TRADEMARK OFFICE

# Opposition/Re-examination process

## 异议 / 重新审查程序

### Process程序:

- Check of formalities检查形式上要求
- Hearing of parties (patent owner + requester) 听取双方陈述（权利人+诉求人）
- Closing of hearing (decided by the DKPTO) 听取阶段结束（专利局决定何时结束）
- Opinion or Decision by the DKPTO 丹麦专利商标局公意见件或决定
- Possible results of decision决定的结果：
  - Patent maintained unamended维持未修订的专利
  - Patent maintained in amended form (only following an Opinion) 维持已修订的专利（根据本局的意见）
  - Cancellation of patent专利遭撤销



## DANISH PATENT AND TRADEMARK OFFICE

# Appeal of decisions from the DKPTO

## 对丹麦专利商标局决定的复审

- Appeals must be filed to the Board of Appeal (Patents Act, sections 24 and 67)所有相关要求要向复审委员会提交（专利法第24、67条）

Main principle: A party adversely affected by a decision may appeal.  
主要原则：受到决定的负面影响的一方可以上诉。

An applicant/patent holder may appeal, if:

申请人 / 权利人上诉条件为：

1. The application is refused 申请案遭拒绝
2. The patent is cancelled or amended after opposition 异议后专利被注销或修订
3. The patent is cancelled or amended after re-examination  
重新审查后专利被注销或修订

An oppositoner/requester may appeal, if:

异议人 / 诉求人上诉条件为：

1. The patent is maintained unamended or amended after opposition or re-examination 异议或重新审查后维持无修订或已修订的专利





## DANISH PATENT AND TRADEMARK OFFICE

# The Board of Appeal (BoA) 复审委员会

### Composition组成:

- Up till 18 members达18名成员
- Chairman and vice-chairman (usually high-court judges) + qualified members with special expertise (typically university professors etc.)主席及副主席（通常高等法院法官）+ 有专业资格成员（通常为大学教授等人士）
- Separate and independent from DKPTO分开及独立于丹麦专利商标局

### Process程序:

- Appeal filed => hearing => statement from the DKPTO => further remarks from parties to the DKPTO's statement => eventual oral proceedings => votation (qualified members + chairmanship) => decision
- 提交复审要求=> 听证会 => 本局声明=> 相关者对本局声明的意见=> 若需要, 口述听审=> 投票（专业资格成员及（副）主席）=> 决定

### BoA decisions 复审委员会的决定:

- May uphold/revoke DKPTO decision, or revert case for renewed processing in the DKPTO维持或注销本局决定, 或将案件发回给丹麦专利商标局
- May be appealed to the Maritime and Commercial Court可以向海事与商务法院上诉

### Grounds, evidence, documentation in BoA appeal 复审委员会程序中的理由、证据、文献资料:

- New grounds, evidence and documentation is allowed允许提出新的理由、证据及文献



## DANISH PATENT AND TRADEMARK OFFICE

# “License of Rights” “当然许可”

- There is no rules in Denmark comparable to UK rules on “license of rights”. The proprietor of the patent shall pay the annual fees in full  
丹麦没有像英国 ‘当然许可’ 的规定。专利权利人必须全额缴纳年费。
- A license agreement is a contractual relationship between the lessor and lessee 许可协议为提供方及接收方双方间的合同关系。
- Section 43: If the proprietor of the patent has granted another person a right to exploit the invention commercially (license), the licensee may not transfer that right to others in the absence of an agreement to the contrary.  
第43条：若专利权利人授权另一个人商业利用专利的发明，授权的人不可在无内容相悖的协议情况下将这权利转让给第三方



DANISH PATENT AND TRADEMARK OFFICE

## Compulsory licenses

### 强制性许可

- Rules on compulsory licenses is given in section 45-50 of the Patent Act  
专利法第45-50条陈述强制性许可相关的规定
  - Section 45: If a patented invention is not worked to a reasonable extent in this country when 3 years have elapsed from the grant of the patent and 4 years have elapsed from the filing of the patent application  
第45条：若一个专利发明在批准后三年内或申请专利日期后四年内在相对的国家没有获得适当的适用
  - Section 46: The proprietor of a patent for an invention the exploitation of which is dependent on a patent or a registered utility model which belongs to another person may obtain a compulsory license to exploit the invention protected by the latter patent or the creation protected by the utility model registration, provided that the former invention constitutes significant technical progress of considerable economic importance  
第46条：利用自己的发明取决于另一个权利人的专利或注册实用新型的专利权利人可以得到强制性许可可以利用他人专利保护的发明或注册实用新型的创作，倘若他人发明形成经济影响重大的长足的技术进步。



DANISH PATENT AND TRADEMARK OFFICE

## Compulsory licenses

### 强制性许可

- Section 47: When required by important public interests, any person who wishes to exploit an invention commercially for which another person holds a patent may obtain a compulsory license to do so.  
第47条：照公共利益需要，任何想商业利用另一人已获得专利的发明的人则可以获得强制性许可。
- Section 48: Any person who, at the time when a patent application was made available to the public, was exploiting the invention for which the patent is applied for commercially in this country may, if the application results in a patent, obtain a compulsory license for the exploitation, provided that exceptional circumstances make it desirable, and he had no knowledge of the application and could not reasonably have obtained such knowledge. Such a right shall also, under similar conditions, be enjoyed by any person who had made substantial preparations for a commercial exploitation of the invention in this country.  
第48条：任何在专利申请向公众公布时已在本国商业利用专利相关发明的人可以——若申请被批准——获得利用该项发明强制性许可，倘若特殊的条件形成可取之处，并且他不知晓申请案的存在而且不可能合理地得到相关信息。在类似的条件下，任何在本国驱动了为充实商业利用该专利的准备的人可以享有如此的权利。
- Section 49: A compulsory license shall only be granted to persons who have not been able by agreement to obtain a license on reasonable terms and who may be considered capable of exploiting the invention in a reasonable and proper manner and in compliance with the license.  
第49条：强制性许可仅授予无法经过协议获得合理条件的许可并且可被视为有能力以合理及适当的及符合许可的条件方式利用该发明的人。



DANISH PATENT AND TRADEMARK OFFICE

## Compulsory licenses

### 强制性许可

- Section 50: The Maritime and Commercial Court shall decide as the court of first instance whether a compulsory license shall be granted and shall also determine the extent to which the invention may be exploited, fix the compensation and lay down the other terms of the compulsory license.

第50条：海事及商务法院以一审法院享有是否授予强制性许可的决定权，并且决定利用发明的范围、报酬及其他强制性许可相关的条件。



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## What happens after a court ruling? 法院裁决后如何?

- Section 65: Office copies of court decisions in proceedings instituted under this Act shall be sent to the Patent Authority on the initiative of the court.  
第65条：法院必须自身地将该法律相关的法院程序中决定的副本传达给专利局。
- Section 55: When a patent has lapsed or been declared to have ceased to have effect or has been revoked or transferred to another person by a final court decision, the Patent Authority shall make an advertisement to that effect.  
第55条：专利已失效或被宣布无效或被撤回或照法院决定转让给他方，专利局则会提出相关公报。