



THE PATENTS RULES, 2003

Rule 28

Procedure in case of anticipation by prior publication

(1) If the Controller is satisfied after investigation under section 13 that the invention so far as claimed in any claim of the complete specification has been published in any specification or other document referred to in clause (a) of sub-section (1) or sub-section (2) of the said section, the Controller shall communicate the gist of specific objections and the basis thereof to the applicant and the applicant shall be afforded an opportunity to amend his specification.

(2) If the applicant contests any of the objections communicated to him by the Controller under sub-rule (1), or if he refiles his specification along with his observations as to whether or not the specification is to be amended, he shall be given an opportunity to be heard in the matter if he so requests:

Provided that such request shall be made on a date earlier than ten days of the final date of the period preferred to under sub-section (1) of section 21:

Provided further that a request for hearing may be allowed to be filed within such shorter period as the Controller may deem fit in the circumstances of the case.

(3) If the applicant requests for a hearing under sub-rule (2) within a period of one month from the date of communication of the gist of objections, or, the Controller, considers it desirable to do so, whether or not the applicant has refiled his application, he shall forthwith fix a date and time for hearing having regard to the period remaining for putting the application in order or to the other circumstances of the case.

(4) The applicant shall be given ten days' notice of any such hearing or such shorter notice as appears to the Controller to be reasonable in the circumstances of the case and the applicant shall, as soon as possible, notify the Controller whether he will attend the hearing.

(5) After hearing the applicant, or without a hearing if the applicant has not attended or has notified that he does not desire to be heard, the Controller may specify or permit such amendment of the specification as he thinks fit to be made and may refuse to grant the patent unless the amendment so specified or permitted is made within such period as may be fixed.

(6) The hearing may also be held through video-conferencing or audio-visual communication devices: Provided that such hearing shall be deemed to have taken place at the appropriate office.

Explanation.— For the purposes of this rule, the expression communication device shall have the same meaning as assigned to it in clause (ha) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000).

(7) In all cases of hearing, written submissions and the relevant documents, if any, shall be filed within fifteen days from the date of hearing.

Rule 28A

Procedure in relation to consideration of report of examiner under section 14

In case the applicant contests any of the objections communicated to him, the procedure specified under rule 28 may apply.

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