

PATENT PROTECTION IN THE FAEROE ISLANDS AND GREENLAND

Nils Tarras-Wahlberg
Holme Patent A/S



Denmark ratified the European Patent Convention in 1989, but it doesn't apply to the Faeroe Islands and Greenland, which are autonomous provinces within the Kingdom of Denmark. Therefore, a granted European patent validated in Denmark does not cover the two provinces. Instead, a national Danish patent must be filed either directly or based on an international patent application.

An international patent application must, according to Article 22(1) of the Patent Cooperation Treaty (PCT), enter a member state not later than 30 months from the international filing date or, if priority is claimed, from the priority date. In Denmark, that provision was implemented on June 10, 2003, when the time limit for national entry in Denmark based on a PCT application was set at 31 months from the priority date, or from the international filing date in case of a first filing.

It was subsequently understood that an international patent application filed in Denmark within 31 months was also valid for the Faeroe Islands and Greenland. But in January 2009, the Danish Patent and Trademark Office (DKPTO) announced that since the authorities of the Faeroe Islands and Greenland had not implemented Article 22(1) of the PCT, there were doubts about whether entry into Denmark at the 31-month deadline would be in force in these two provinces. The issue has yet to be tried before a court or to otherwise be tested. We are still waiting for a clear interpretation of the geographical scope of the amended Patent Act. Therefore, until relevant case law has been established, the DKPTO recommends that to be effective in the Faeroe Islands and Greenland, an international patent application translated into Danish should enter Denmark 20 months after the international filing date or, if priority is claimed, after the priority date.

The filing of international patent applications after the special deadlines for the Faeroe Islands and Greenland but before June 9, 2009 have been treated by the DKPTO as requests for re-establishment and such requests have automatically been approved. International patent applications that enter Denmark after June 9, 2009 will be subject to the normal procedure for re-establishment.

If a demand for international preliminary examination is filed within 19 months of the international filing date or of the priority date, an international patent application entering Denmark up to 30 months after filing will still be valid in Greenland.

Since Denmark signed the London agreement, the DKPTO requests that just the claims of a granted European patent are translated into Danish when validated in Denmark. The title, abstract, description and text can either be in English or Danish. Previously, even though a national Danish patent

“FOR A PATENT TO BE IN FORCE IN THE FAEROE ISLANDS AND GREENLAND, THE ENTIRE PATENT MUST BE IN DANISH”

application could be filed in English as well as Swedish and Norwegian, the patent application had to be translated into Danish in its entirety—a discrepancy with European patents validated in Denmark. In order to remove the discrepancy, the DKPTO now requests that just the claims of a granted Danish patent filed after January 1, 2009 are in Danish. As with a validated European patent, the title, abstract, description and text can either be in English or Danish. But for a patent to be in force in the Faeroe Islands and Greenland, the entire patent must be in Danish.

Previously, if a European patent had been maintained in amended form after opposition, a translation of the patent claims and a new English description and drawings needed to be filed. However, the DKPTO has now revised the requirement and procedure so that only the amended claims need to be translated and refiled, irrespective of any amendments to the description.

Further simplifying matters, the prosecution of a Danish patent has been made easier to follow for non Danish-speaking representatives, applicants and inventors as well as for third parties. Upon request, all correspondence during the examination can be in English, which in many cases also means lower costs for the client.

Nils Tarras-Wahlberg is a patent attorney at Holme Patent A/S. He can be contacted at: ntw@holmepatent.dk