

Administrative Revocation and Invalidation Mechanisms

Argentina

The Argentinian legal system provides two types of laws for these purposes: (a) National Law on Administrative Procedures No. 19.549 (LNPA) and its regulations approved by Decree No. 1759/72 of 2017 (RLNPA); and (b) Article 72 of Law No. 24.481 on Patents (LP) modified by Law No. 24.481 and its regulations (RLP) established by Decree No. 260/96, Annex II modified by Decree No. 403/19.

LNPA provides that all definitive administrative acts issued by the National Patent Administration (ANP), which is under the authority of the National Institute of Industrial Property, shall be subject to the remedies provided for in the LNPA and the RLNPA. They are:

- request for reconsideration (Article 84 and related provisions of the LNPA), which must be filed before the same body that issued the decision, within 10 working days of notification of the act;
- hierarchical appeal (Article 89 of the RLNPA), which can be filed as an alternative to the request for reconsideration in case the latter is rejected (Article 89b)1) or directly before the the authority that issued the impugned act within 15 working days of notification (Article 89b)2); and
- appeal (Article 94), which must be filed before the authority that issued the impugned act within 15 working days of notification.

If a request for reconsideration is lodged under the LNPA, the Legal Department of the ANP will issue the corresponding opinion. Where the Commissioner so allows, it will issue the relevant ruling, notifying the appellant. If the request for reconsideration is denied, after the interested party is notified, the file will be sent to the President of the INPI in order for the Legal Affairs Directorate to evaluate a hierarchical appeal in the alternative.

The hierarchical appeal, direct or in subsidy, will be dealt with by the INPI's Legal Affairs Directorate, which will prepare a corresponding opinion and will forward it to the INPI President, who will issue the pertinent resolution, notifying the appellant. If the hierarchical is rejected, the interested party has the option of filing an appeal within 15 working days and/or initiating the pertinent judicial action within 90 working days from the notification of the contested administrative act.

If an appeal is filed, it is submitted to the Ministry of Productive Development, which is the highest authority of INPI in order for it to be resolved. If the appeal is rejected, the appellant can initiate the pertinent judicial action within the term of 90 working days from the notification of the contested administrative act.

Article 72 of the Patent Law and the Regulations of the Patent Law provides for an administrative appeal which can be filed only against the refusal of the patent. In this case, it is the appellant's option to file this administrative appeal or those of the LNPA, being non-cumulative alternatives. The term to file the appeal is 30 business days, from the notification of the notification of the contested administrative act. The appeal will be dealt with by the Legal Affairs Directorate, which will prepare a corresponding opinion and will forward it to

the INPI President, who will issue the pertinent resolution, notifying the appellant. If the appeal is rejected, the complainant may recur to court.

The intervention of an Industrial Property Agent or of an attorney is required to file an administrative appeal. Applicants who lack the means to be represented must request the INPI to designate an Industrial Property Agent who will act for them free of charge in accordance with Article 5(f) of the Regulations governing the profession of Industrial Property Agent, approved by INPI Resolution P-101/06 modified by INPI Resolution P-201/19. Persons applying for that free representation must submit a duly legalized certificate of indigence issued by a judicial authority.

Once the document has been entered in the ANP, through which the appeal is lodged, the Legal Affairs Directorate will verify whether it has been filed in good time and in the proper form. If the complainant has not paid the requisite fee or the brief does not have the signature of an Industrial Property Agent or lawyer, the owner will be notified to comply with these requirements on pain of in limine rejection of the appeal.

Upon exhaustion of the administrative remedies, the complainant can initiate the judicial action within the term of 90 working days from the notification of the contested administrative decision.