

Administrative Revocation and Invalidation Mechanisms

New Zealand

Anyone may make an application to the Commissioner for revocation of a patent under Sections 112 to 114 of the Patents Act 2013, and Regulations 102 to 105 of the Patents Regulations 2014, on one or more of the following grounds:

- (a) that the invention, so far as claimed in a claim, is not a patentable invention under [section 14](#);
- (b) that the patentee is not entitled to the patent;
- (c) that the complete specification does not comply with [subpart 2](#) (which relates to specification requirements);
- (d) that the patent was obtained by fraud, false suggestion, or a misrepresentation;
- (e) that the invention, so far as claimed in a claim, was secretly used in New Zealand before the priority date of that claim;
- (f) that the patent has been granted contrary to law.

The Commissioner may refuse the application where:

- (a) the application is frivolous or vexatious;
- (b) the issues raised are substantially the same as raised in previous opposition or re-examination, or any other previous proceeding before the Commissioner or the court.

Administrative revocation proceedings are similar to pre-grant opposition proceedings, but the application can only be made after the patent has been granted.

The applicant is required to file a statement of case, to which the patentee is required to respond with a counter-statement. Each party may then file evidence. The Commissioner will decide the case after providing both parties with an opportunity to be heard.

If the Commissioner is satisfied, on the balance of probabilities that one or more of the grounds of revocation has been established, the Commissioner may revoke the patent.

Alternatively, the Commissioner may give the patentee an opportunity to amend the claims of the patent to overcome the issues raised by the applicant for revocation. If the amendments are acceptable to the Commissioner, the patent may remain in force, but with the amended claims.

If a patent has been revoked, it is deemed never to have been granted.

The Commissioner may, at any stage in the proceeding, refer the application to the court.