

## Administrative Revocation and Invalidation Mechanisms

### United Kingdom

While the United Kingdom provides no opposition system, it is possible for anyone to request revocation of a patent under Section 72 of the Patent Act 1977. Upon request of any person, the Comptroller may, by order, revoke a patent for an invention on any of the following exhaustive list of grounds: (i) the invention is not a patentable invention; (ii) the patent was granted to a person who was not the only person entitled; (iii) the specification of the patent does not disclose the invention clearly and completely enough for it to be performed by a person skilled in the art; (iv) the matter disclosed in the specification of the patent extends beyond the original patent application as filed; and (v) the protection conferred by the patent has been extended by an amendment which should not have been allowed.

The quasi-judicial *inter partes* proceedings, which are conducted by a senior official, are considered very similar to post-grant opposition proceedings, but without any time limit for starting the proceedings. The applicant has to make a written statement and the patentee is given the possibility to file a counterstatement. The Comptroller might revoke patents *ex officio*. The request can be made during the life time of the patent. According to Section 72(5), the decision of the Comptroller on the request for revocation has no estoppel effect. The revocation has the *ex tunc* effect.<sup>1</sup>

Separately, the Comptroller has the power to initiate revocation proceedings on his own initiative, in certain limited circumstances. These are set out in section 73 of the Patents Act 1977. First, he can start revocation proceedings if it appears that the patent lacks novelty by virtue of the disclosure in a patent application which has an earlier priority date but which was published after the priority date of the granted patent in question. Second, he can start revocation proceedings if it appears there is a granted European Patent (UK) for the same invention and held by the same patent proprietor. And third, he can start revocation proceedings where a non-binding statutory opinion on the validity of the patent has been requested and issued,<sup>2</sup> and that opinion takes the view that the patent lacks novelty or inventive step. The Comptroller has said that he will only exercise this last power in “clear cut” cases. In all scenarios, the patent proprietor has the chance to make observations and arguments, and also to amend the patent. An oral hearing is also available before the Comptroller makes a final decision on patent revocation.

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<sup>1</sup> UK IPO: Manual of Patent Practice, 72.03; available at: <http://www.ipo.gov.uk/p-manual-practice>.

<sup>2</sup> See Section 74A of the Patents Act 1977.