

Re-examination systems

New Zealand

Sections 94-100 provide for reexaminations of patent applications and granted patents under certain circumstances.

The grounds for re-examination are the same as those for pre-grant opposition:

- (a) that the invention, so far as claimed in a claim, is not a patentable invention under [section 14](#);
- (b) that the nominated person is not entitled to the patent;
- (c) that the complete specification does not comply with [subpart 2](#) (which relates to specification requirements) other than [section 39\(2\)\(a\)](#) (which requires claims to relate to 1 invention only);
- (d) that the applicant is attempting, or has attempted, to obtain the grant of a patent 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 granting the patent would be contrary to law.

The procedure is *ex parte*, i.e. between the Commissioner and the patentee or applicant. The person who requests re-examination cannot participate further in the process after making the request.

At any time after the publication of an accepted specification any person may request re-examination. The Commissioner can also initiate re-examination without an external request.

The Commissioner must re-examine if requested to do so. The applicant or patentee has the opportunity to respond to any adverse report through amendments and/or submissions. If the adverse findings are not resolved, the Commissioner has the power to refuse an application or revoke a patent. Before making a final decision on the re-examination, the Commissioner must provide the applicant or patentee with an opportunity to be heard. If the Commissioner's decision is to revoke the patent, this decision can be appealed to the court.