

Administrative Revocation and Invalidation Mechanisms

Mexico

In Mexico, the Federal Law on the Protection of Industrial Property (LFPPI) provides for administrative cancellation proceedings after the patent is granted. Such proceedings are held before the Mexican Institute of Industrial Property (IMPI), which is empowered to deal with such matters.

The administrative cancellation procedure may be initiated ex officio by the IMPI, on application by any person who has a legal interest and substantiates the arguments on which his application relies, or by the Federal Public Prosecutor's Office when the State has any interest.

The valid grounds on whose basis an application for the cancellation of a patent may be filed are set out in Article 154 of the LFPPI and reproduced below:

- Where the protected subject matter is not considered an invention, the invention is not be patentable, lacks novelty, an inventive step or industrial application, pursuant to the LFPPI.
- Where the invention is not disclosed in a manner that is sufficiently clear and complete, so that a person skilled in the art might perform it.
- Where the claims exceed the disclosure contained in the application, as initially filed with the Institute.
- Where the patent results from a divisional application and includes claims corresponding to subject matter that has been processed in violation of Article 11 of the LFPPI.
- Where, in connection with a procedure for rectification or limitation, provided in Articles 122 and 123 of the LFPPI, the subject matter protected by the patent has been extended.
- Where by error or negligence, a right of priority has been recognized and thereby the novelty or inventive step of the subject matter protected by the patent was improperly determined.
- Where the patent has been granted in violation of Article 50 of the LFPPI.
- Where the patent has been granted to persons not entitled to it, in accordance with the provisions of Article 38 of the LFPPI.

The LFPPI also stipulates, in the penultimate paragraph of Article 154, that the cancellation proceedings provided in this Article may be exercised at any time, as of the effective date of publication of the patent in the Gazette. The Law also stipulates that if the grounds for cancellation partially affect the patent, it shall be declared partially invalid.

The decision issued by the IMPI may be challenged by the following means:

- motion for review, as provided for in the Federal Law of Administrative Procedure, filed before the IMPI;
- administrative trial, provided for in the Federal Law on Administrative Disputes, which is filed before the Federal Court of Administrative Justice, requesting the setting aside of the IMPI decision; and
- Amparo trial, provided for in the Amparo Law regulating Articles 103 and 107 of the Political Constitution of the United Mexican States, which is brought before the Judiciary, requesting State protection for the complainant in respect of a human rights violation.

Finally, the LFPPI further provides for different circumstances in which a patent may expire or in which a patentee may lose the rights conferred by the patent, namely:

- expiry of the validity of the patent (Articles 53 and 160(1) of the LFPPI);
- failure to pay the fee to maintain validity (Article 160(2) of the LFPPI);
- failure to work the patent (Article 149 of the LFPPI); and
- compulsory license and Public Interest License (Articles 146-153 of the LFPPI).