

## Cancellation and Administrative Invalidation Mechanisms

### Mexico

In Mexico, the Industrial Property Law (IPL) 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 78 of the IPL and reproduced below:

- where a patent has been granted in violation of the provisions governing the requirements and conditions for the granting of patents set forth in articles 16, 19 and 47 of the IPL which establish what is patentable and what is not patentable, as well as the documentation and information that must be filed together with the application;
- where a patent has been granted in violation of the provisions of the law in force at the time the patent was granted – in which case the legal representation of the applicant for the patent may not be challenged;
- where the application is abandoned while it is being processed; and
- where the grant of the patent is found to be vitiated by serious error or oversight, or where it was granted to persons not entitled to obtain it.

For the cancellation of patents, the IPL also establishes the prescribed time limits for initiating administrative proceedings for cancellation. These time limits are variable, depending on the grounds of cancellation invoked, and are computed as from the publication in the Industrial Property Gazette of the patent that is considered to infringe the rights of a third party. These terms are set forth in the penultimate paragraph of article 78 of the IPL.

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, seeking the setting aside of the IMPI decision.
- 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, seeking State protection for the complainant in respect of a human rights violation.

Finally, the IPL 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 23 and 80, section I of the IPL);

- failure to pay the fee to maintain validity (article 80, section II of the IPL);
- failure to work the patent (article 73 of the IPL); and
- compulsory license and Public Interest License (articles 70 to 77 of the IPL).