



23 February 2015

(15-1056)

Page: 1/2

Council for Trade-Related Aspects
of Intellectual Property Rights

Original: English

**NOTIFICATION OF LAWS AND REGULATIONS
UNDER ARTICLE 63.2 OF THE TRIPS AGREEMENT**

NEW ZEALAND: PATENTS ACT 2013

Notifying Member	NEW ZEALAND
-------------------------	-------------

Details of the notified legal text

Title	Patents Act 2013
Subject matter	Patents
Nature of notification	<input checked="" type="checkbox"/> Main dedicated intellectual property law or regulation <input type="checkbox"/> Other law or regulation
Link to legal text	http://members.wto.org/crnattachments/2014/IP/NZL/14_5448_00_e.pdf
Notification status	<input type="checkbox"/> First notification <input type="checkbox"/> Amendment or revision to notified legal text <input checked="" type="checkbox"/> Replacement or consolidation of notified legal text(s)
Previous notification(s) referred to	IP/N/1/NZL/P/1 IP/N/1/NZL/P/1/Add.1 IP/N/1/NZL/P/1/Add.2 IP/N/1/NZL/P/1/Add.3

Brief description of the notified legal text

The Act replaces the Patents Act 1953, which was modelled on the (now repealed) UK Patents Act 1949.

The standard of patent examination required by the Patents Act 1953 was less strict than that required by most other countries. This leads to patent rights being granted in New Zealand that may be broader in scope than rights granted for the same invention in other countries. This has the potential to disadvantage New Zealand businesses and consumers, as technology which may be freely available elsewhere could be covered by a patent in New Zealand. Since much innovation is incremental, building on what already exists, local innovators may be disadvantaged as well.

The 2013 Act strengthens the criteria for granting a patent to ensure that patents are only granted for "genuine innovations", that is, inventions that are a "manner of manufacture" and that are novel, non-obvious and useful. Novelty and obviousness will be measured against all matter made available to the public anywhere in the world, by any means – an 'absolute novelty' standard. The standard under the Patents Act 1953 was 'local novelty' – only material published in New Zealand was taken into account when determining novelty or obviousness.

To be granted a patent under the Patents Act 1953 an invention must just be a manner of manufacture, and be novel. There was no examination for obviousness.

The 2013 Act contains explicit provisions setting out subject matter that is not eligible for patent protection:

- Methods of medical treatment, surgery and diagnosis practised on human beings (the New Zealand courts had previously ruled that such methods were not patentable under the Patents Act 1953);
- Human beings and biological processes for their generation;
- Inventions whose commercial exploitation would be contrary to morality or public order;
- Plant varieties;
- Computer programs 'as such'.

The 2013 Act also introduces simplified procedures that will reduce the cost and complexity involved in challenging "bad" patents – that is patents that should not have been granted.

The 2013 Act also provides for the establishment of a Maori Advisory Committee to advise the Commissioner of Patents in relation to patent applications for inventions involving traditional knowledge or indigenous plants and animals. The Committee's function will be to provide advice that can be used by the Commissioner to assist in determining whether such inventions are novel, or involve an inventive step, or whether the commercial exploitation of such inventions would be offensive to Maori.

Language(s) of notified text	English
Date of adoption	13 September 2013
Entry into force	13 September 2014

Notification details

Submission date of notification	4 December 2014
Other information	Patent applications are examined and patents granted under the Patents Act 2013 and the Patents Regulations 2014 by the Intellectual Property Office of New Zealand (IPONZ), a business unit of the Ministry of Business, Innovation and Employment. <u>Website:</u> http://www.iponz.govt.nz/
Agency or authority responsible	Ministry of Business, Innovation and Employment (MBIE) PO Box 1473 Wellington 6140 New Zealand Phone: +64 4 472 0030 Fax: +64 4 473 4638 <u>Website:</u> http://www.mbie.govt.nz/ Contact email address: IPPolicy@mbie.govt.nz