

Outcomes

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Some of the possible outcomes of intellectual property litigation or alternative dispute resolution procedures include:

Settlements

These could include damages or an account of profits from the infringer and a payment of legal costs.

Settlements could also include a licensing agreement or an agreement whereby the parties set out terms on which they are prepared to co-exist in the marketplace.

Revocations and cancellations

Rights can be cancelled because they should not have been granted, removed because they have become invalid or revoked for non-use.

Trade marks

A trade mark can be removed from the register if:

- it no longer distinguishes the goods or services of the business; or
- it has never distinguished the goods or services.
- has not been used for a continuous period of three years following the registration date; or

- has become a common name in general public use for the goods or services for which the trade mark is registered; or
- has become likely to deceive or confuse the public, as to the nature, quality, or geographical origin of the goods or services.

A trade mark can be declared invalid on the application of an aggrieved person if, at the date the trade mark was filed, it:

- did not distinguish the goods or services of the business from those of others;
- designated a characteristic of the goods or services provided such as, for example, the kind, quality, intended purpose or geographical origin of the goods;
- was offensive to a significant section of the community;
- consisted of a sign which is customary in the trade; or
- conflicted with earlier trade mark rights owned by another trader.

- **Patents**

A patent application can be opposed on application by a third party if the invention:

- Was not legally obtained from the true inventor
- Was published or used in New Zealand before the priority date
- Was not applied for within 12 months of the first overseas application
- Is claimed in an earlier New Zealand patent
- Is obvious and does not involve an inventive step
- Is not an "invention" as defined by the Patents Act 1953.

A granted patent can be revoked on application by a third party on any of the grounds for opposition mentioned above or if:

- The applicant was not entitled to apply for the patent
- The invention is not useful
- The specification does not sufficiently and fairly describe the invention or the method by which the invention is to be performed
- The scope of the claims is not clear
- The claims are not fairly based on the specification