

What is Difference Between "Patent Revocation" and "Patent Cancellation" in Myanmar?

Both "patent revocation" and "patent cancellation" are legal processes that impact the status of a granted patent; however, they differ in their origins, procedures, and outcomes. The distinctions between these two terms are rooted in their respective triggers and the underlying reasons for their application.

Patent Revocation:

"Patent revocation" is a legal process initiated by an external party, typically an individual or legally formed organization, with the aim of challenging the validity and continuation of a granted patent. This process is based on specific grounds stipulated by the patent law. The intention behind patent revocation is to reassess and potentially invalidate a patent if it is determined that the patentee's claims are not legitimate or if the patent was obtained through fraudulent or non-compliant means.

Example: An individual named Inventor A discovers a new method for water purification and successfully obtains a patent for the innovative technology. Subsequently, an environmental organization becomes aware of significant evidence suggesting that Inventor A's patent claims were misleading and did not accurately represent the true novelty of the invention. This prompts the environmental organization to file an application for patent revocation with the Myanmar patent office. The organization's intention is to challenge the validity of the patent and ensure that only genuine and groundbreaking inventions receive patent protection.

Patent Cancellation:

On the other hand, "patent cancellation" is an administrative action undertaken by the patent office itself, specifically the Registrar, without the initiation of an external party. This action is based on predetermined conditions outlined in the patent law, which, if violated, allow the patent office to remove a patent from the official registration records. Patent cancellation is a procedural step taken by the patent office to address non-compliance issues or other circumstances that compromise the integrity of the patent system.

Example: Company B, a pharmaceutical research firm, has been granted a patent for a new drug formulation that claims to use unique biological resources found in a remote region of Myanmar. However, upon closer examination, it is revealed that the company did not accurately describe the origin and use of these biological resources as required by the patent law's description requirements. Recognizing this non-compliance, the Registrar of the patent office proactively initiates a patent cancellation procedure. The patent is canceled from the official registration records due to the violation of specific description requirements related to genes and biological resources.

Differences Based on Grounds:

The grounds for both patent revocation and patent cancellation are distinct and reflect the specific circumstances that warrant each action. Patent revocation is typically based on factors such as non-fulfillment of patent eligibility requirements, evidence of ineligibility, fraudulent acquisition, or violations of patent law. In contrast, patent cancellation arises from conditions such as violation of confidentiality orders, failure to pay annual fees, or non-compliance with specific description requirements related to genes, biological resources, or traditional knowledge.

Initiation and Authority:

Patent revocation is initiated by external parties and involves submitting an application or legal request to the patent office for a review of the patent's validity. The patent office then evaluates the grounds and makes a decision on whether to revoke the patent. On the other hand, patent cancellation is a proactive action taken by the patent office itself, based on pre-established conditions. The Registrar has the authority to cancel a patent if any of the predetermined conditions are met.

Outcomes:

The outcome of patent revocation is a potential invalidation of the patent, either in part or in its entirety. The outcome of patent cancellation is the removal of the patent from the official registration records, rendering it null and void.

In essence, while both "patent revocation" and "patent cancellation" are mechanisms to address issues related to patent validity and compliance, they differ in their triggers, initiators, procedures, and outcomes.

**By Nguyen Vu QUAN
Partner & IP Attorney**

Contact

KENFOX IP & Law Office

Building No. 6, Lane 12/93, Chinh Kinh Street, Nhan Chinh Ward, Thanh Xuan District, Hanoi, Vietnam

Tel: +84 24 3724 5656

Email: info@kenfoxlaw.com / kenfox@kenfoxlaw.com