PATENTS COMMITTEE

REPORT OF THE NEW ZEALAND GROUP

APAA COUNCIL MEETING 2026

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CATALYST INTELLECTUAL PROPERTY

Summary

Patent filing activity in New Zealand has increased over the last 12 months.

The New Zealand legislative framework for patents has changed very little in the last 12 months. The Patents Amendment Act 2026 came into force, addressing divisional applications that are subject to the (now repealed) Patents Act 1953.

In the year to September, two court decisions relating to patent law issued, and there were nine published decisions of the Commissioner of Patents.

Filing statistics

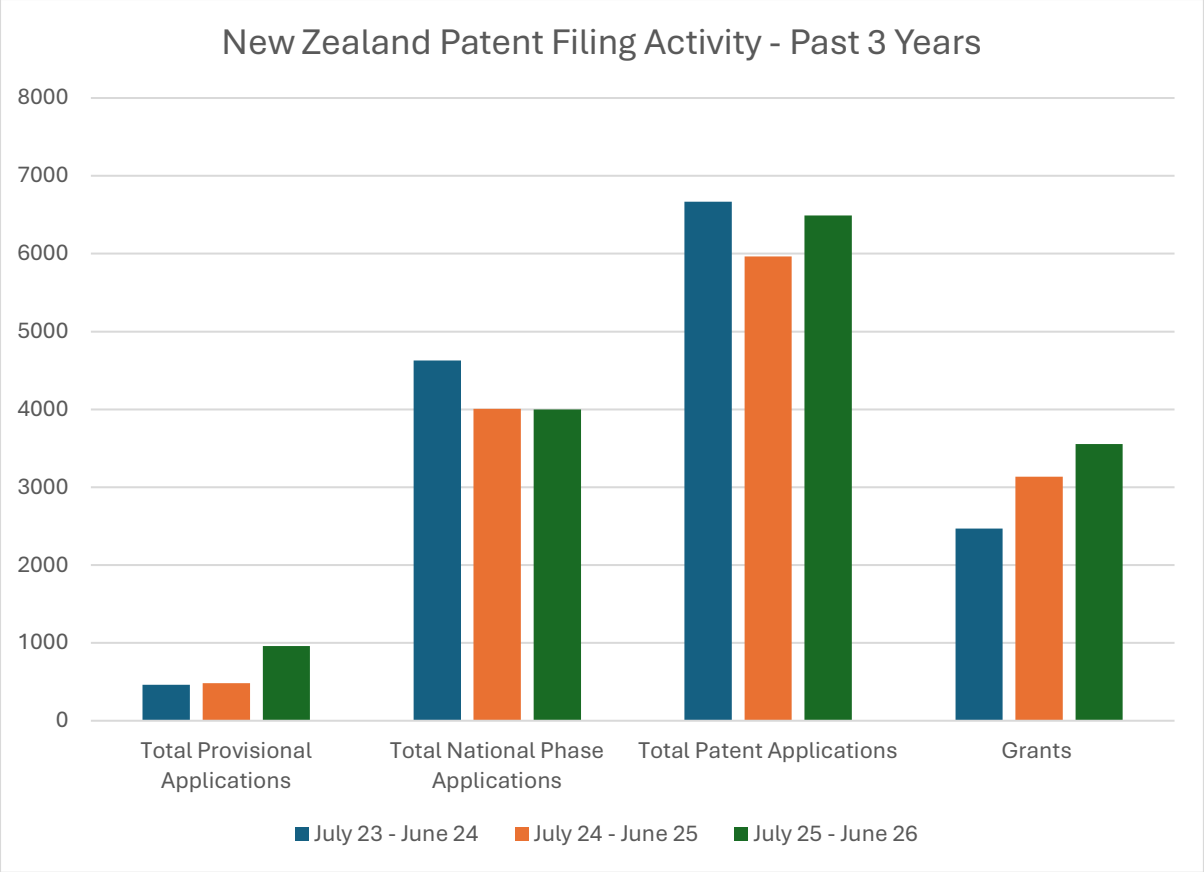
The total number of patent applications (new provisional, complete, and national phase entry applications) filed in New Zealand in the 12 months to June 2026 increased to approximately 6,500, up from 6,000 in the previous year, although remaining slightly below the 2023–24 level of 6,700.

The increase was largely driven by a near doubling of provisional applications, from 483 to 959, possibly due in part to self-filers with AI assistance.

National phase entries remained steady at approximately 4,000, following a substantial decline in the previous year.

Non-provisional filings by New Zealand applicants also remained relatively stable, at approximately 270 applications.

The number of patents granted continued to increase, reaching approximately 3,550, possibly reflecting increased examination capacity at the Intellectual Property Office of New Zealand.



Legislative Developments

Intellectual Property Laws Amendment Bill

The Intellectual Property Laws Amendment Bill remains in a holding pattern. The Bill has not yet been introduced to Parliament. No progress has been made with this Bill since 2020, and no further progress is expected for some time as New Zealand goes to the polls for a general election in November.

The Intellectual Property Laws Amendment Bill is an omnibus Bill intended to be a general review of various IP laws, including the Patents Act 2013 to address technical issues. For patents, the main issues relate to the transitional provisions for divisional applications (now carved out into the Patents Amendment Act, discussed below), clarity around the examination request process, poisonous divisional applications, patent exhaustion, and adoption of EPC2000-type claims.

Patents Amendment Act 2026

The 2025 report to this committee provided an update on progress with the Patents Amendment Bill. The Bill was passed on 2 June 2026 and came into force on 4 June 2026 as the Patents Amendment Act 2026.

The purpose of the Act is to address a loophole in the Patents Act 2013 relating to a very small number of divisional applications having a priority date that precedes the commencement of the Patents Act 2013.

Previously, these divisionals would be examined according to the provisions of the (long repealed) Patents Act 1953. The 1953 Act did not provide for examination of inventive step, and the standard for sufficiency was whether the claims are "fairly based" on the matter described in the specification (which is lower than the current standard of "support").

The Patents Amendment Act amended the transitional provisions of the Patents Act 2013 so that future divisional applications falling within the 1953 Act purview will be examined to the standard of the Patents Act 2013, meaning that the Commissioner must be satisfied on the balance of probabilities that the claims are novel and inventive, and are supported by the disclosure in the patent specification.

Case Law

Court Decisions

AbbVie Inc v The Commissioner of Patents [2026] NZHC 1140 (1 May 2026)

The 2025 report to this committee reported on a decision from an IPONZ hearing where the Assistant Commissioner declined to proceed with a patent application. During examination of the application, the applicant (AbbVie) did not overcome examination objections prior to the deadline for acceptance (12 months from the date of the first examination report). AbbVie requested a hearing near the deadline, and filed submissions and amendments in the hearing.

AbbVie appealed the decision to the High Court. Heine J ruled that the Assistant Commissioner erred in refusing to extend the prescribed period under s 230 for putting the application in order for acceptance. The Assistant Commissioner had taken the view that AbbVie had used the hearing procedure, rather than the examination phase provided by the Act and associated Regulations to put the application in order for acceptance. The Assistant Commissioner stated that this undermines the legislative scheme for examining patent applications and accordingly refused to extend time which led to refusal of the application.

However, the decision of Heine J noted: "I agree that the hearing process cannot be used to extend what should properly occur within the examination phase, especially outside the prescribed period. However, this is a matter of fact and degree. The practical reality is that the test of an application in a hearing will inevitably traverse some matters that were or could be addressed within the examining phase."

Further, Heine J noted that the last examination report that issued from IPONZ stated: "You have the right to request a hearing" and "You can request a hearing on any objections in this report." Heine J explained that this "examination report effectively conveyed to AbbVie that the appropriate response was to request a hearing at which any objections would be considered." Hein J therefore concluded that the Assistant Commissioner did err in not grating an extension under s 230.

Oligoscience Biotechnology GmbH v Commissioner of Patents [2025] NZHC 3255 (30 October 2025)

The High Court upheld an IPONZ decision refusing a patent application directed to genetically modified bacteria for producing human milk oligosaccharides. The Court found that the claimed use of a magnesium-regulated cell lysis system to improve product recovery lacked an inventive step, as it would have been obvious to combine the teachings of two prior art publications.

The decision also highlights the importance of appropriate evidence in patent examination proceedings. The Court upheld the exclusion of experimental evidence that had not been provided by affidavit or statutory declaration, and gave limited weight to an inventor's declaration addressing the advantages of the invention.

The decision reinforces the importance of properly establishing the common general knowledge of the skilled person and presenting suitable evidence during examination hearings, given the limited opportunities to introduce further evidence on appeal.

IPONZ Hearing Decisions

Nine Decisions of the Commissioner were issued in the year to September 2026. Three notable decisions are discussed below.

ChemoCentryx, Inc. [2025] NZIPOPAT 11

The Assistant Commissioner considered Swiss-type claims directed to treating a known medical condition using a known drug, but with specified physiological outcomes. The claims were rejected on the basis that the claimed outcomes were inherent in the previously disclosed treatment, and therefore represented a mere discovery rather than a new therapeutic use. The decision highlights the careful consideration required to obtain second medical use protection based solely on newly identified properties or effects of an existing treatment.

Regeneron Pharmaceuticals, Inc. [2026] NZIPOPAT 1

The Assistant Commissioner allowed the correction of a prosecution error under section 202 of the Patents Act 2013. The applicant's patent attorney had failed to reinstate postponement of acceptance after receiving instructions to file a divisional application, resulting in the parent application being accepted prematurely. The decision permitted correction of the acceptance date and the subsequent divisional filing, illustrating the scope of the Commissioner's discretion to correct genuine prosecution errors.

Resmed Pty Ltd v Fisher & Paykel Healthcare Ltd [2026] NZIPOPAT 6

Fisher & Paykel Healthcare successfully opposed a patent application concerning respiratory therapy apparatus on grounds of lack of novelty and inventive step. The Assistant Commissioner adopted a broad construction of the claims, declining to read limitations into the undefined expression "dual therapy". The decision illustrates the importance of clearly defining terminology relied upon to distinguish prior art. It is also a relatively rare example of a successful opposition under the more applicant-friendly provisions of the Patents Act 1953.