

ARTICLE

## Patent law, traditional knowledge, and disclosure practices in Aotearoa New Zealand

Jessica C. Lai<sup>1</sup>  and Evana Wright<sup>2</sup>

<sup>1</sup>Wellington School of Business and Government, Te Herenga Waka Victoria University of Wellington, New Zealand and <sup>2</sup>Faculty of Law, University of Technology Sydney, Australia

**Corresponding author:** Jessica C. Lai; Email: [jessica.lai@vuw.ac.nz](mailto:jessica.lai@vuw.ac.nz)

### Abstract

On 24 May 2024, member states of the World Intellectual Property Organization (WIPO) adopted the Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge. Mandating that contracting parties require that patent applicants disclose any genetic resources or associated traditional knowledge that their invention is based on, the treaty has been hailed as historic triumph. In this article, we analyze whether the treaty is so remarkable in relation to Aotearoa New Zealand's existing law and practice. Finding that it is not, and that the treaty could place limits on the law, we argue that Aotearoa New Zealand should not sign the Treaty but could learn from it. We conclude that, while Aotearoa New Zealand must continue to partake in any ongoing international negotiations, it should continue to find ways to address the domestic situation.

**Keywords:** patent law; traditional knowledge; fraud; false suggestion; misrepresentation; disclosure; Aotearoa New Zealand

### Introduction

For decades, Indigenous peoples have been decrying the misappropriation of their knowledge and resources, and concomitantly third parties obtaining patents over the gains of this misappropriation.<sup>1</sup> This misappropriation has occurred partly as a result of conflicting norms around knowledge. For example, if not covered by a nondisclosure agreement or current Western intellectual property (IP) form, Western researchers have assumed that knowledge and resources are in the public domain and thus free to use without constraints, though, in fact, they might be regulated by laws and norms of the peoples from whom the knowledge or resources came. At the same time, Indigenous knowledge is often not recorded the same way as Western knowledge, and is often orally transmitted, which has meant that intellectual property offices have not located it when deciding on whether an invention in a patent application is new or nonobvious. This has allowed for the knowledge and resources of Indigenous peoples, and inventions derived from these, to be patented.

---

<sup>1</sup> See, e.g., Lai 2019, 2014b; Lai et al. 2019; Wright, 2020.

On 24 May 2024, member states of the World Intellectual Property Organization (WIPO) adopted the Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge (“the GRATK Treaty”) with the aim of addressing such patents.<sup>2</sup> Declared a historic triumph,<sup>3</sup> the objectives of the GRATK Treaty are to “enhance the efficacy, transparency and quality of the patent system with regard to genetic resources [(GRs)] and traditional knowledge [(TK)] associated with genetic resources”<sup>4</sup> and to “prevent patents from being granted erroneously for inventions that are not novel or inventive with regard to genetic resources and traditional knowledge associated with genetic resources.”<sup>5</sup> Patents are time-limited exclusive rights that are granted for inventions that are new, nonobvious, and capable of industrial application.<sup>6</sup> These exclusive rights are granted in return for a complete disclosure of the invention by the applicant in the form of a specification setting out the details of how the invention may be carried out.<sup>7</sup>

The GRATK Treaty purportedly achieves its objectives, and thus protects Indigenous<sup>8</sup> peoples’ and local communities’ (IPLCs’) genetic resources and knowledge,<sup>9</sup> by requiring that patent applicants disclose the country of origin or source of GRs and/or the provider or source of any “associated traditional knowledge” (ATK) their claimed invention is based on.<sup>10</sup> Patent offices are to use these disclosures to better examine a patent vis-à-vis novelty and inventive step (nonobviousness).<sup>11</sup> It might otherwise be almost impossible for patent examiners to realize that the claimed invention is based on these GRs or ATK, because it is not always apparent from the claimed invention disclosed in an application, or the relevant knowledge is not accessible to patent offices.<sup>12</sup>

While the GRATK is an important step forward in WIPO’s efforts to protect TK, the WIPO GRATK Treaty may be critiqued on many grounds.<sup>13</sup> For the purposes of this article, we note that a core issue with the treaty lies in the maximum standards the treaty sets for possible sanctions and remedies against patent applicants who do not correctly comply with the disclosure requirement. The WIPO GRATK Treaty allows parties to have “appropriate, effective, and proportionate legal, administrative, and/or policy measures to address a failure to provide the” required information.<sup>14</sup> However, only in limited cases of fraud may there be post-grant sanctions, and applicants must be given the opportunity to rectify any failure to disclosure before sanctions may be imposed.<sup>15</sup> Not being able to implement effective sanctions in the absence of fraud may create incentives for applicants to not

<sup>2</sup> WIPO GRATK Treaty 2024. Note that WIPO and the GRATK Treaty uses the term “traditional knowledge,” as does the Patents Act 2013 (NZ). We prefer the term Indigenous knowledge to refer to the knowledge of Indigenous peoples, as it acknowledges that the knowledge is continually developing and not merely “traditional.” However, we use the term “traditional knowledge” (TK) when referring to the WIPO negotiations, the GRATK Treaty, or the provisions in the Patents Act 2013 (NZ).

<sup>3</sup> See, e.g., WIPO 2024; UN 2024; Jayaswal 2024.

<sup>4</sup> WIPO GRATK Treaty 2024, Art. 1(a).

<sup>5</sup> *Ibid.*, Art. 1(b).

<sup>6</sup> WTO TRIPS Agreement 1994, Art 27(1).

<sup>7</sup> WTO TRIPS Agreement 1994, Art 29.

<sup>8</sup> Note we have capitalised “indigenous” when referring to Indigenous peoples but not when referring to indigenous nouns (e.g., indigenous plants). We have also retained capitalization/noncapitalization from source materials.

<sup>9</sup> E.g., Raven et al. 2024; UN 2024.

<sup>10</sup> WIPO GRATK Treaty 2024, Art. 3.

<sup>11</sup> See generally Bagley 2019; Okediji 2019, 296; Lai, Wright, and Goodman 2025.

<sup>12</sup> Lai 2014a, 38.

<sup>13</sup> See, e.g., Lai, Wright, and Goodman 2025.

<sup>14</sup> WIPO GRATK Treaty 2024, Art. 5.

<sup>15</sup> *Ibid.*, Art. 5.2bis, 5.3.

disclose information in ways that do not amount to fraud, such as wilful blindness or misrepresentation.

At the time of writing, Aotearoa New Zealand had not signed or implemented the GRATK Treaty. Here we argue that it should not, as its law and Intellectual Property Office of New Zealand (IPONZ) practice already go beyond the provisions of the GRATK Treaty in many ways. Moreover, as we argue, signing and ratifying the GRATK Treaty would place limits on Aotearoa New Zealand's ability to address Māori interests and Te Tiriti o Waitangi (Treaty of Waitangi)<sup>16</sup> obligations. At the same time, to the extent that the GRATK Treaty might go further than Aotearoa New Zealand law and practice, there is nothing to stop the legislature and IPONZ from developing its law and practice and retaining the best of both worlds – to enact laws that fit the local situation without being bound by any maximum standards set out in the GRATK Treaty.

In earlier work, we noted that the IPONZ patent application form already has a disclosure checkbox requiring applicants to acknowledge where they believe the claimed invention is “derived from Māori traditional knowledge or from New Zealand indigenous plants or animals”,<sup>17</sup> but that it was unclear what the consequences might be of an incorrect disclosure. Indeed, the Aotearoa New Zealand Ministry of Business, Innovation and Employment (MBIE) acknowledged that such disclosures are “optional.”<sup>18</sup> Furthermore, since the entry into force of the Patents Act 2013, the wording of the declaration in the checkbox and the accompanying text has changed numerous times. In order to obtain a better understanding of IPONZ practice with respect to disclosure requirements, including the role of the Patents Māori Advisory Committee (PMAC) in the process, we filed two Official Information Act 1982 (OIA) requests with IPONZ seeking information on the establishment and subsequent changes to the application disclosure checkbox and the patent register portal, as well as the consequences of ticking, or failing to tick, the disclosure checkbox. Drawing on the response of IPONZ to this request, in this paper, we clarify the potential consequences for failure to comply with the disclosure requirement. Analyzing Aotearoa New Zealand's existing patent law that allows for opposition, reexamination, or revocation on the basis of fraud, and also the lesser legal standards of false suggestion and misrepresentation, we argue that, in certain circumstances, incorrect use of the checkbox could result in an application being declined or a patent being revoked. Thus, introducing a maximum standard that does not allow for patent invalidity except in the case of fraud would weaken Aotearoa New Zealand's current law, which allows for opposition or invalidity in cases of false suggestion or misrepresentation.

This paper commences with an overview of the measures set out in the GRATK Treaty with respect to disclosure. This is followed by analysis of the role of the PMAC in Aotearoa New Zealand and existing patent practice with respect to disclosures, or failure to disclose, consistent with the existing application form, drawing on information released by IPONZ under the OIA. The paper then engages in analysis of the application of existing laws relating to fraud, false suggestion, or misrepresentation to disclosure obligations and concludes with an assessment of the impact of the GRATK on domestic law and the ability of the patent system to protect the interests of Māori and meet Crown obligations under Te Tiriti o Waitangi.

<sup>16</sup> Signed on behalf of the English Crown and by the Indigenous tribes of New Zealand, Te Tiriti o Waitangi, the Treaty of Waitangi 1840 (NZ), is the founding document of modern New Zealand and is a core part of its constitutional law; *New Zealand Māori Council v Attorney General* [1994] 1 NZLR 513, 516 Lord Woolf (PC); Orange 2021; Hille, Jones, and Ward 2023. For a glossary of Māori terms, see Table 2.

<sup>17</sup> Lai, Wright, and Goodman 2025.

<sup>18</sup> MBIE 2018, 10.

## The GRATK Treaty: An administrative measure

The GRATK Treaty is the first and, at the time of writing, only instrument to arise out of more than 20 years of discussions at the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) on the protection of IP, GRs, TK, and traditional cultural expressions (TCEs). It is not rights based, but rather an administrative measure designed to improve the patent system by providing more information to patent examiners and preventing the grant of so-called erroneous patents. The substantive section, Article 3, has two parts: The first relates to claimed inventions that are “based on”<sup>19</sup> GRs and the second to claimed inventions that are “based on traditional knowledge associated with genetic resources.” Regarding GRs, Article 3.1 of the GRATK Treaty mandates contracting parties to require patent applicants to disclose “(a) the country of origin of the genetic resources, or, (b) in cases where the information in Article 3.1(a) is not known to the applicant, or where Article 3.1(a) does not apply, the source of the genetic resources.”<sup>20</sup> Article 3.2 of the GRATK Treaty requires contracting parties to require patent applicants to disclose: “(a) the Indigenous Peoples or local community, as applicable, who provided the traditional knowledge associated with genetic resources, or, (b) in cases where the information in Article 3.2(a) is not known to the applicant, or where Article 3.2(a) does not apply, the source of the traditional knowledge associated with genetic resources.”<sup>21</sup>

The GRATK Treaty restricts the sanctions that may be applied in the event that a party fails to comply with the disclosure requirements. Specifically, Article 5.3 provides that “no Contracting Party shall revoke, invalidate, or render unenforceable the conferred patent rights solely on the basis of an applicant’s failure to disclose the information specified in Article 3 of this Treaty.”<sup>22</sup> Applicants must be given the “opportunity to rectify a failure to disclose the information required in Article 3 before implementing sanctions or directing remedies.”<sup>23</sup> Contracting parties may only exclude the opportunity to rectify a failure to disclose in cases of “fraudulent conduct or intent”<sup>24</sup> and may “provide for post grant sanctions or remedies where they has been fraudulent intent in regard to the disclosure requirement.”<sup>25</sup>

## Disclosure and the Patents Māori Advisory Committee

### The law

In force for 60 years, the Patents Act 1953 made no specific reference to Māori or their perspectives and concerns.<sup>26</sup> A significant tranche of the review of the 1953 Act related to Māori concerns, particularly in relation to biotechnology.<sup>27</sup> The focus was on biological

<sup>19</sup> The treaty states that “based on” “means that the genetic resources and/or traditional knowledge associated with genetic resources must have been necessary for the claimed invention, and that the claimed invention must depend on the specific properties of the genetic resources and/or on the traditional knowledge associated with genetic resources.” WIPO GRATK Treaty 2024, Art. 2. Earlier terms in the negotiations included “materially based on,” which would have been narrower.

<sup>20</sup> WIPO GRATK Treaty 2024, Art. 3.1.

<sup>21</sup> *Ibid.*, Art. 3.2.

<sup>22</sup> *Ibid.*, Art. 5.3.

<sup>23</sup> *Ibid.*, Art. 5.2*bis*. Some have focused on the non-retroactivity and ability to rectify the failure to disclose correctly as the positive aspects of the Treaty; e.g., Volchok, Saunders and Powell (2024); Heathcote and Caine 2024.

<sup>24</sup> WIPO GRATK Treaty 2024, Art 5.2*bis*.

<sup>25</sup> *Ibid.*, Art 5.4.

<sup>26</sup> Note that prior to the entry into force of the Patents Act 2013 (NZ), IPONZ practice was to consider Māori perspectives under the provision that allowed the Commissioner of Patents to refuse an application if the “use” of the invention would be contrary to morality; Patents Act 1953 (NZ), s 17(1). See Lai 2014b, 139–40.

<sup>27</sup> MED 2002, 21–28.

resources, indigenous life forms, and the patenting of related inventions including the genetically modified, though “traditional knowledge” in a broader sense was also discussed.<sup>28</sup> The review evaluated concerns around the use of mātauranga Māori (without prior informed consent (PIC)), the potential value of databases of mātauranga Māori to be used by patent examiners, and how Māori should be consulted on relevant patent applications.<sup>29</sup>

The resultant Patents Act 2013 created the PMAC, with members who must, “in the opinion of the Commissioner,” have knowledge of te ao Māori (the Māori worldview) and tikanga Māori (Māori protocol and practice).<sup>30</sup> The role of the Committee is connected to a general exclusion from patentability of inventions the “commercial exploitation” of which would be contrary to “public order” or “morality.”<sup>31</sup> In assessing this exclusion, the Commissioner may seek advice from the PMAC or any person that the Commissioner considers appropriate for assessing this.<sup>32</sup> A separate part of the act then stipulates that it is the Committee’s function to advise the Commissioner on whether a claimed invention is derived from “Māori traditional knowledge” or “indigenous plants or animals” and, if so, whether “the commercial exploitation of that invention is likely to be contrary to Māori values.”<sup>33</sup>

### The practice

Neither the Patents Act 2013 nor its 2014 Regulations provide any guidance on what would trigger (or lead to) the Commissioner of Patents to seek the advice of the PMAC. The legislation does not clarify the link between the provision under which the PMAC may be asked to provide advice (the exclusion from patentability due to public order/morality), on the one hand, and that the invention may be derived from Māori TK, or indigenous plants or animals, and its commercial exploitation may be contrary to Māori values (the role of the Committee), on the other hand. Note that what the Commissioner could consider to be contrary to public order/morality is broader than the specified functions of the PMAC, including other concerns that Māori might have that are not related to indigenous plants or animals, or the commercial exploitation of which might not be contrary to Māori values – we return to this subsequently.

Presumably, before seeking the advice of the PMAC, there must be some realization that the role of the Committee might be implicated. This could be a difficult task, given that this knowledge is often not well published, even if not secret, and patent examiners are typically

<sup>28</sup> Ibid., 23–24.

<sup>29</sup> Ibid., 27–28.

<sup>30</sup> Patents Act 2013 (NZ), s 225(3). See the glossary at the end of this paper for the meaning of Māori terms. Note that between the Patents Bill 2008 and the passing of the Patents Act 2013, the Waitangi Tribunal published *A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity*, Taumata Tuarua (2011), Wai 262 (hereinafter “Wai 262”). This made recommendations on patent law, some of which were similar to those already in the Patents Bill 2008. However, the Wai 262 Report did not result in any changes to the Bill. See Lai 2014b, 255–76.

The Waitangi Tribunal (set up by the Waitangi Tribunal Act 1975) is a permanent commission of inquiry that investigates past and present Crown breaches of Te Tiriti of Waitangi The Treaty of Waitangi (see n 16).

<sup>31</sup> Patents Act 2013 (NZ), ss 15(3) and 226. *Ordre public* and morality are specifically permissible exceptions from patentability under WTO TRIPS Agreement 1994, Art. 27.2. The Patents Act 2013 uses the term “public order” rather than “*ordre public*.” There is some debate as to whether “public order” and “*ordre public*” have the same meaning or not. However, the Patents Act 2013 specifically states that “public order” is to have the same meaning as the TRIPS “*ordre public*.” Thus, for the sake of clarity, the term “*ordre public*” is used in this discourse.

<sup>32</sup> Patents Act 2013 (NZ), s 15(3).

<sup>33</sup> Patents Act 2013 (NZ), ss 225–28.

**(a) From 2014 to April 2023**

**Traditional Knowledge**  If the invention is derived from traditional knowledge please tick the checkbox below.

**(b) From April 2023 to November 2023**

**Māori traditional knowledge or NZ indigenous species**  If you believe that the invention may be derived from Māori traditional knowledge or from plants or animals indigenous to New Zealand please tick the checkbox below.

**(c) From November 2023 to present**

**Traditional Knowledge**  If you believe that the invention may be derived from Māori traditional knowledge or from New Zealand indigenous plants or animals please tick the checkbox below. This provides you with the opportunity to provide additional information or submissions. More information relating to [Māori IP](#) can be found on our website.  
 Applicant submits the invention is derived from Māori traditional knowledge or from New Zealand indigenous plants or animals

**Figure 1.** IPONZ Patent Application Checkbox.<sup>34</sup> (a) From 2014 to April 2023. (b) From April 2023 to November 2023. (c) From November 2023 to present.

trained in Western science and engineering.<sup>35</sup> In order to assist patent examiners, since the entry into force of the Patents Act 2013, in 2014, the IPONZ patent application form has included a checkbox for patent applicants to indicate certain information regarding “traditional knowledge.” There have been three iterations of this – see [Figure 1](#).

The PMAC did not provide any feedback on these changes, though they were advised of them. Notably, the latest iteration is the most detailed, closely mirroring wording from the Patents Act 2013.<sup>36</sup> According to information released by IPONZ in response to our OIA requests, the change was made “to align [it] with the primary purpose of this field, and in part due to incorrect and inconsistent use of this field by patent applicants.”<sup>37</sup> We return to the potential legal implications of the current wording, particularly that the applicant “submits,” subsequently.

### *From checkbox to PMAC*

Checking the box on the patent application form does not mean that the application is automatically referred to the PMAC. While correctly using the checkbox to indicate that an application relates to Māori TK or New Zealand indigenous plants or animals would mean that “the application will meet the general assessment criteria and be referred to the Committee,” the “field however is not always used correctly or consistently by patent applicants.”<sup>38</sup> Thus, if the “traditional knowledge” field is checked by an applicant, this (as well as any accompanying documents) is checked during the examination process.<sup>39</sup> The assessment of whether to refer an application to the PMAC is made during the examination process and “is based primarily on the subject matter of the application, but also includes checking the traditional knowledge field and any additional documentation provided.”<sup>40</sup>

<sup>34</sup> Extracts from versions of the IPONZ Patent Application Forms from 2014 to present. Moss 2025; Cowcil 2025; Barclay and Cassie 2025.

<sup>35</sup> Wai 262, 200–01; MBIE 2018, para. 55.

<sup>36</sup> More specifically, Patents Act 2013 (NZ), s 226. Moss 2025.

<sup>37</sup> Moss 2025.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

Recall that the determination of whether “an invention claimed in a patent application is derived from Māori traditional knowledge or from indigenous plants or animals” falls within the remit of the PMAC.<sup>41</sup> Yet the foregoing would indicate that it is not the PMAC that assesses whether a claimed invention is derived from Māori TK or from indigenous plants or animals. This is supported by Draft Terms of Reference for the PMAC (also released in response to the OIA requests),<sup>42</sup> which state that “Patent applications received by IPONZ are to be assessed by IPONZ examiners to determine whether the invention claimed is, or appears to be, derived from Māori traditional knowledge or from indigenous plants or animals,” or “Applicants may also self-identify cases which have potential to conflict with Māori values.”<sup>43</sup> In contrast, “The Committee will consider the patent applications forwarded to it, and advise whether the commercial exploitation of that invention is likely to be contrary to Māori values.”<sup>44</sup> The Draft Terms of Reference further state that the Committee’s advice is to contain an indication of whether the commercialization of the claimed invention is likely to be contrary to Māori values or not. The Draft Terms of Reference do not state that the Committee’s advice has to indicate if there is derivation from Māori TK or New Zealand indigenous plants or animals.

Hence, IPONZ examiners and applicants are to assess derivation, whereas the PMAC is to assess whether the commercial exploitation is likely to be contrary to Māori values. Note that IPONZ examiners are to “have regard to guidelines to be determined in consultation with the Committee”<sup>45</sup> – these are yet to be developed more than 10 years since the PMAC was established. Arguably, the division of tasks between IPONZ examiners and applicants, on the one hand, and the PMAC, on the other hand, is not consistent with the legislation. The PMAC has statutory functions of providing advice on both derivation and whether the commercial exploitation is contrary to Māori values. While the use of the application checkbox is highly helpful, and the nature of the application process implicitly requires that an examiner assesses whether there is derivation from Māori TK or from indigenous plants or animals, this should not remove the PMAC’s function of providing advice on this.

In practice, and contrary to the position outlined previously, the PMAC does consider both derivation and whether commercial exploitation is contrary to Māori values. The PMAC typically engages in a two-step enquiry: First, is the claimed invention derived from Māori TK or indigenous plants or animals; and second, if so, would the commercial exploitation of the invention be contrary to Māori values?<sup>46</sup> This approach reflects the legislative provisions setting out the function of the PMAC.

It is worth bearing in mind that the Committee may “regulate its own procedure, subject to any direction given by the Commissioner,”<sup>47</sup> thus raising the possibility that the Committee may informally advise the Commissioner on applications not referred to it. That said, the Committee may not have the support required to stay apprised of the thousands of patent applications that IPONZ examines every year.<sup>48</sup> The Draft Terms of Reference provide the support of an “expert advisor” (experienced in practices and procedures of patent examination) and a “liaison officer” to liaise between IPONZ and

<sup>41</sup> Patents Act 2013 (NZ), s 226(a).

<sup>42</sup> This was obtained through OIA, via Moss 2025, who stated that the Draft is from May 2022. The document sent through is dated 2021.

<sup>43</sup> Draft Terms of Reference for the Patents Māori Advisory Committee (May 2022), cls 6.2–6.3.

<sup>44</sup> *Ibid.*, cl 6.4.

<sup>45</sup> *Ibid.*, cl 6.2.

<sup>46</sup> Wright and Robinson 2024, 229–30.

<sup>47</sup> Patents Act 2013 (NZ), s 278. This is the same in the Trade Marks Act 2002 (NZ), s 180.

<sup>48</sup> Wai 262, 200.

the Committee “and provide administrative support.”<sup>49</sup> It is unlikely that a single “liaison officer” could provide the Committee sufficient administrative support across all patent application examinations.

### PMAC’s advice

#### *Contrary to Māori values*

As of 14 July 2025, 35 patent applications showed as having checked the “traditional knowledge” field, and the PMAC had been referred 16 patent applications.<sup>50</sup> There was no overlap between these sets of applications. Of these applications, only two had been identified as likely “contrary to Māori values”<sup>51</sup> and subsequently abandoned, and the review of another application resulted in a request for additional information from the applicant before ultimately being found not likely to be contrary to Māori values.<sup>52</sup>

As outlined in the foregoing, under the 2013 Act, if the decision is made to seek advice from the Committee, the statutory functions of the Committee and the exclusion from patentability are narrow. This is because the Committee must assess both the conditions of (1) derivation and (2) commercial exploitation being contrary to Māori values.<sup>53</sup> The Patents Act 2013 does not specify what would constitute “derivation.” In other words, where is the line between something that derives from Māori TK and something that is so distantly related to Māori TK that it could be said to be different? In its advice so far, the PMAC has not specifically dealt with this issue. However, when considering questions of derivation, the PMAC has taken the position that where the claimed invention is derived from indigenous plants or animals, it will necessarily involve Māori TK.<sup>54</sup>

The term “commercial exploitation” comes from the *ordre public*/morality clauses of the 2013 Act and WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).<sup>55</sup> However, the act does not delineate the meaning of “values” or tell us whether this is something to be defined by IPONZ or the Committee. The IPONZ website states that the purpose of the PMAC (along with the other Māori Advisory Committees established for trade marks and plant variety rights), is to assess applications “under the context of values, concepts, practices and knowledge associated with Māori culture.”<sup>56</sup> In assessing whether a claimed invention may be contrary to Māori values, the PMAC has taken into account the extent to which Māori have an interest in the commercial exploitation of the indigenous plant or animal or the Māori TK.<sup>57</sup> In reviewing an application from Comvita<sup>58</sup> for an invention derived from Mānuka honey, the PMAC requested information from the applicant as to how Māori will be involved in the commercialization of the invention.<sup>59</sup> In response

<sup>49</sup> Draft Terms of Reference for the Patents Māori Advisory Committee (May 2022), cl 9.1–9.4.

<sup>50</sup> For analysis of cases referred to the Patents Māori Advisory Committee, see Wright and Robinson 2024.

<sup>51</sup> New Zealand Patent Application 750401 “Manuka Honey based Dietary Supplement” Custard Square Limited; New Zealand Patent Application 750236 “Kawa Kawa Pesto” Motoka Limited.

<sup>52</sup> New Zealand Patent 722140, “Marker Compounds of Leptospermum Honeys and Methods of Isolation and Assaying Thereof,” Comvita Limited; see Wright and Robinson 2024, 231–32.

<sup>53</sup> It seems that IPONZ takes these two requirements as “either or” (see IPONZ 2016, 25). However, it is clear from the wording of Patents Act 2013 (NZ), s 226, that both derivation and commercial exploitation being contrary to Māori values are required.

<sup>54</sup> Wright and Robinson 2024, 229–30.

<sup>55</sup> See n 31.

<sup>56</sup> IPONZ n.d.-b, “Māori Committees for IP.”

<sup>57</sup> Wright and Robinson 2024, 231–32.

<sup>58</sup> New Zealand Patent 722140, “Marker Compounds of Leptospermum Honeys and Methods of Isolation and Assaying Thereof,” Comvita Limited.

<sup>59</sup> IPONZ, Patent Examination Report 1, “722140 Marker Compounds of Leptospermum Honeys and Methods of Isolation and Assaying Thereof” (9 December 2021), 9–10; Wright and Robinson 2024, 231.

Comvita provided information on potential in-kind and monetary benefits to Māori stakeholders.<sup>60</sup> In particular, Comvita stated that their business “aligns with Māori values to deliver a stronger commercial outcome for local Iwi landowners and New Zealand as a whole, enjoying trade, environmental and cultural benefits.”<sup>61</sup> Following this response, the PMAC advised that the commercial exploitation of the invention was not likely contrary to Māori values.

#### *Relation to public order/morality exclusion*

The Patents Act 2013 does not state whose public order or morality is to be assessed.<sup>62</sup> Logically, Māori concerns relating to public order or morality must sometimes be sufficient, as the Commissioner can seek the advice of the PMAC to make his or her decision on these provisions. But does it have to be all Māori or a significant proportion of Māori? Or would an iwi (tribe), a hapū (sub-tribe), or a kaitiaki (guardian) suffice? And does the role of the PMAC relate to public order, morality, or both? It is not clear if or how the PMAC has dealt with these issues.

Some guidance may be drawn from the Patent Examination Manual, which provides that public order refers to “the protection of public security and the physical integrity of individuals as part of society, and encompasses the protection of the environment.”<sup>63</sup> In contrast, morality relates to “the culture inherent in New Zealand society as a whole or a significant section of the community should form the basis for determining what behaviour is right and acceptable, and what behaviour is wrong or immoral.”<sup>64</sup> Taking the ordinary meaning of “values,” it would seem that Māori values comes under morality rather than public order. Indeed, guidance issued in 2008 in relation to considerations of morality under the old Patents Act 1953 specifically referred to Māori interests in determining whether use of an invention would be contrary to morality.<sup>65</sup>

In contrast, the Waitangi Tribunal<sup>66</sup> deemed that Te Tiriti o Waitangi guaranteed right to tino rangatiratanga (chieftainship) – as expressed through kaitiakitanga (guardianship) – over taonga (that which is sacred) must be a matter of public order (if not also public morality), because Te Tiriti o Waitangi is a constitutional document, which defines the New Zealand legal and social order.<sup>67</sup> Notably, the 2013 Act and the Waitangi Tribunal differ as to what exactly should be protected: Whereas the Waitangi Tribunal was (and is) very Te Tiriti o Waitangi-orientated and, thus, reflects protecting the role of kaitiaki (guardians) and public order, the 2013 Act is not so directed, and the use of the term “Māori values” would imply that morality is relevant.<sup>68</sup> This depends on what would fall into the concept of “values” and how the Committee would decide whether something is contrary to those “values.”

<sup>60</sup> Duncan de Geest and Rachel McIvor, AJ Park (acting for Comvita Limited), Response to Examination Report (8 July 2022), 11; Wright and Robinson 2024, 232.

<sup>61</sup> Duncan de Geest and Rachel McIvor, AJ Park (acting for Comvita Limited), Response to Examination Report (8 July 2022), 11.

<sup>62</sup> Cf. Trade Marks Act 2002, s 17(1)(c), which states that the Commissioner of Trade Marks must not register a mark if the use or registration is “likely to offend a significant section of the community, including Māori.”

<sup>63</sup> See IPONZ n.d.-c, Patent Examination Manual, “Section 15: Inventions Contrary to Public Order or Morality not Patentable Inventions.”

<sup>64</sup> Ibid.

<sup>65</sup> “Following this review IPONZ will continue to raise objections under s17(1) where it appears that the use of the invention would be contrary to morality for New Zealand society as a whole or for a significant section of the community, including Māori.” See IPONZ 2008, cited in Frankel and Lai 2016, 47.

<sup>66</sup> See nn 16 and 30.

<sup>67</sup> Wai 262, 201 and 210. For an in-depth analysis of the Wai 262 Report, see Lai 2014b, Ch 4.

<sup>68</sup> On the relationship between Wai 262 and the Patents Act 2013 (NZ), see n 30.

### *The decision*

The Commissioner of Patents is not bound by the opinion of the PMAC but considers the Committee's advice when deciding the broader question of public order or morality, allowing the Commissioner to balance competing interests. For example, the Commissioner could consider different Māori perspectives not represented by the PMAC. However, as an advisory committee, the Commissioner of Patents could theoretically deem the commercial exploitation of an invention not to be contrary to public order or morality, despite the PMAC advising that there is both derivation and contravention of Māori values, and notwithstanding the lack of any differing opinion.

Where an application has been referred to the PMAC, the applicant is advised of the fact and the outcome in the Patent Examination Report. Where there is the advice that the commercial exploitation of the invention is likely to be contrary to Māori values, applicants are provided with the opportunity to provide further information. As set out in the foregoing, 16 cases have been referred to the PMAC with two cases found to be likely contrary to Māori values and subsequently abandoned.<sup>69</sup> However, it is important to note that this is not the sole issue that was raised with these applications. Additional concerns were raised by the examiner with respect to issues such as novelty and obviousness.

An example of the potentially conflicting issues at play in review of applications by the PMAC is an application dealing with a bacterial strain with insecticidal activity where the bacterial strain was isolated in New Zealand and had insecticidal activity against two indigenous insect species.<sup>70</sup> This application was referred to the PMAC for advice. The PMAC was of the opinion that there was potential that the commercial exploitation of the invention was contrary to Māori values on the grounds that genetic modification of the bacterial strain “could be considered manipulation of whakapapa [(genealogy)]” and “may also be an issue relating to kaitiakitanga, mana [(authority)], and tapu/noa [(sacred/to be free of tapu)].”<sup>71</sup> The commercial use of the bacterial strain as an insecticide against indigenous insect species was also noted as potential “manipulation of whakapapa which has broader impacts on the relationship between the bacterial strain, the target species and the wider environment.”<sup>72</sup> However, the PMAC also noted that the alleged invention may be less toxic or harmful than other insecticides and may therefore “indicate that the commercial exploitation of the invention is less likely to be contrary to Māori values.”<sup>73</sup> The examination report concluded by stating that IPONZ had considered the advice of the PMAC and considered that the commercial exploitation of the alleged invention would not be contrary to Māori values.

In another case, dealing with an application for an invention derived from Mānuka honey,<sup>74</sup> the PMAC raised concerns regarding the exploitation of the invention. The application was the subject of extended correspondence between IPONZ and the applicant to obtain further information and satisfy the concerns of the PMAC, before IPONZ ultimately found the alleged invention not likely to be contrary to Māori values.

<sup>69</sup> New Zealand Patent Application 750401, “Manuka Honey based Dietary Supplement,” Custard Square Limited; New Zealand Patent Application 750236, “Kawa Kawa Pesto,” Motoka Limited.

<sup>70</sup> New Zealand Patent 732524, “Compositions and Methods for Biological Control,” Agresearch Limited.

<sup>71</sup> IPONZ, Patent examination report 1, “732524 Compositions and Methods for Biological Control” (4 June 2024), 4–5.

<sup>72</sup> *Ibid.*, 5.

<sup>73</sup> *Ibid.*, 5.

<sup>74</sup> New Zealand Patent 722140, “Marker Compounds of *Leptospermum* Honeys and Methods of Isolation and Assaying Thereof,” Comvita Limited.

**(a) From 2014 to April 2023**

As well as “Maori Conflict possible” with a radio button next to it, one saw:



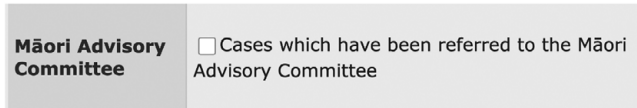
**(b) From April 2023 to November 2023**

As well as “Maori Conflict possible” with a radio button next to it, one saw:

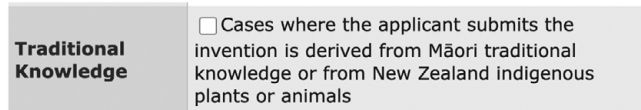


**(c) From November 2023 to present**

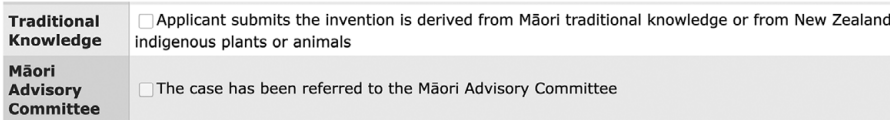
The “Maori conflict possible” radio button was repurposed to:



The “Traditional Knowledge” checkbox changed to reflect the checkbox on the application:



**Figure 2.** IPONZ Public Patent Register: what one sees in searching the register: (a) From 2014 to April 2023. (b) From April 2023 to November 2023. (c) From November 2023 to present.



**Figure 3.** IPONZ Public Patent Register: what one sees per patent case, as at 9 May 2025.

**Capturing the data**

On the public patent register, one has the ability to see whether an applicant checked one of iterations of the aforementioned boxes, and also (since April 2023) whether an application was sent to the PMAC. At the time of writing, one could search the register according to these two variables (see Figure 2), or see on individual patent filings whether the applicant had checked the box on their application and whether the application was referred to the PMAC (see Figure 3).

From 2014 to April 2023, one saw “Maori Conflict possible”<sup>75</sup> as a radio button and “traditional knowledge” as a check box. This was changed after, in 2021, having received significant interest in which applications were being referred to the PMAC, IPONZ began to investigate how it could make this information more publicly accessible. IPONZ:

found that the “Traditional knowledge” checkbox seemed to be being used regularly only by one attorney firm, who were ticking it for multiple applications (633 cases in April 2021) even if those didn’t seem to include any discernable traditional knowledge. In contrast, the “Māori conflict possible” radio button wasn’t being used at all; we understood it wasn’t functional for applicants.<sup>76</sup>

<sup>75</sup> This was the spelling used.

<sup>76</sup> Cowcil 2025.

This meant that the “Maori Conflict possible” box was not being used. According to IPONZ, “[i]n April 2021, there were only three cases with this box ticked (754232, 754241, 736052) and we don’t have records why.”<sup>77</sup> Until April 2023, the box was not “functional or editable on the client side,” and IPONZ was not using it to indicate anything. Furthermore, IPONZ considered that the term was “ambiguous”<sup>78</sup> and not related to wording from the Patents Act 2013. However, it should be noted that, while the terminology does not reflect the legislation, the Draft Terms of Reference for the PMAC refer to the ability of the applicant to “self-identify cases which have potential to *conflict with Māori values*”.<sup>79</sup>

In 2023, IPONZ decided to repurpose the “Maori Conflict possible” box to indicate when the office had referred an application to the PMAC.<sup>80</sup> While some information on the fact of referral and the decision of the PMAC may be set out in the Examination Report, detailed advice or information on the deliberations of the PMAC is not published along with other prosecution documents for a patent application but can be sought through an OIA request once an application is open for public access (OPI).<sup>81</sup>

## The consequences of failing to check the box

### *Can there be legal consequence?*

Though MBIE has been discussing the possibility of introducing a mandatory disclosure requirement since 2018,<sup>82</sup> there is no statutory requirement in the Patents Act 2013 or Patents Regulations 2014 for disclosure of origin or source, and the changes made to the checkbox wording explained in the foregoing did not relate to MBIE’s work on such a requirement.<sup>83</sup> From IPONZ documentation and replies to our OIA requests, it appears that IPONZ believes that the checkbox cannot create a statement with any legal effect. Instead, they view it as a “voluntary declaration” to assist IPONZ, which does not relate to any requirement of the Act or Regulations and thus cannot bear any legal consequences.<sup>84</sup> To illustrate, when asked what the consequences are if an applicant fails to positively disclose, and the application is subsequently identified as being derived from “Māori traditional knowledge” or “New Zealand indigenous plants or animals,” IPONZ replied:

None. There is no requirement under the Patents Act 2013 or Patents Regulation 2014 for identifying that an application is derived from “Māori traditional knowledge” or “New Zealand indigenous plants or animals”.<sup>85</sup>

We respectfully disagree. In the following, we explain why we disagree. While it is possible to incorrectly tick the checkbox, we focus on incorrectly failing to check it, as this may be more consequential. Applicants may be unlikely to knowingly incorrectly check the box if they believe this might hold up their application. At the same time, Māori are likely more concerned with failures to check the box if this results in an application not being referred

<sup>77</sup> Ibid.

<sup>78</sup> Ibid.

<sup>79</sup> Draft Terms of Reference for the Patents Māori Advisory Committee (May 2022), cl 6.3 (emphasis added).

<sup>80</sup> IPONZ Patents Technical Focus Group (TFG) Meeting Minutes (6 April 2023), 3–4.

<sup>81</sup> Ibid, 3–4.

<sup>82</sup> MBIE 2018, paras 68–69.

<sup>83</sup> Moss 2025.

<sup>84</sup> IPONZ Patents TFG Meeting Minutes (6 April 2023), 3.

<sup>85</sup> Moss 2025.

to the PMAC when it should, than those who incorrectly check it but the examiner decides not to refer the application to the Committee.

Previously, the IPONZ guide on applying for patents stated that the “Traditional Knowledge” checkbox was “Optional – select this if the invention is derived from Maori traditional knowledge or from indigenous plants or animals.”<sup>86</sup> At that stage, when it was specifically stated that the field was optional, it was arguable that failure to check the box – even when one knew that the invention was derived from Māori TK or an indigenous plant or animal – may not have had any legal consequences. This was reinforced by the wording of the checkbox, which had no explanatory text next to the checkbox, and only help text above it, stating, “If the invention is derived from traditional knowledge please tick the checkbox below.” (See [Figure 1](#).)

In contrast, in July 2025 (the time of writing), the IPONZ guide on applying for patents stated that, for the checkbox, “Tick this box if you believe that your invention is derived from Māori traditional knowledge, or from plants or animals indigenous to New Zealand. You may also choose to provide a document containing further details.”<sup>87</sup> At the same time, the application form itself had an explanatory text next to the checkbox stating that the “applicant submits the invention is derived from Māori traditional knowledge or from New Zealand indigenous plants or animals.” The application form also had help text, stating “If you believe that the invention may be derived from Māori traditional knowledge or from New Zealand indigenous plants or animals please tick the checkbox below. This provides you with the opportunity to provide additional information or submissions. More information relating to Māori IP can be found on our website.” The removal of the guidance that the field is “optional,” together with the increase in details around the checkbox – especially the wording “applicant submits” – adds to an applicant’s answer to the field having legal consequences. This is particularly in light of the law around fraud, false suggestion, and misrepresentation in relation to patent applications and good faith interactions between applicants and the patent office, discussed in the following.

### **Fraud, false suggestion, or misrepresentation**

In Aotearoa New Zealand, one can oppose an application on the basis “that the applicant is attempting, or has attempted, to obtain the grant of a patent by fraud, false suggestion, or a misrepresentation,”<sup>88</sup> or seek revocation of a patent because “the patent was obtained by fraud, false suggestion, or a misrepresentation.”<sup>89</sup> One can also seek reexamination of an accepted application or a granted patented on the same bases.<sup>90</sup> A similar provision also existed in the 1953 Act, though this was limited to revocation on the basis that “the patent was obtained on a false suggestion or representation.”<sup>91</sup> To date, there have not been any court decisions on the 2013 provisions dealing with fraud, false suggestion, or

<sup>86</sup> IPONZ n.d.-a, “Apply for a Patent” (accessed 7 January 2019 and 17 July 2025).

<sup>87</sup> Ibid.

<sup>88</sup> Patents Act 2013 (NZ), s 92(1)(d). Similar provisions exist around the world; see Bucknell (ed.) 2011, Ch. 30 on “Fraud, Misrepresentation/Inequitable Conduct.” Lai, Wright, and Goodman 2025 have discussed the US provisions in relation to the GRATK Treaty.

<sup>89</sup> Patents Act 2013 (NZ), s 114(1)(d).

<sup>90</sup> Patents Act 2013 (NZ), ss 94–95. Any person can oppose a patent or seek reexamination, which can result in refusal to grant the patent or revocation of the patent, respectively (ss 98–99). However, the processes are different. For example, in an opposition proceedings, the opponent is a party to the hearing and decision (s 93), whereas in a reexamination the requestor has no right to be heard (s 100). While the ability to amend a specification in response to a successful opposition are limited (s 93), applicants have the right to amend their specification in response to a reexamination “if appropriate” (ss 98(2) and 99(2)).

<sup>91</sup> Patents Act 1953 (NZ), s 41(j).

misrepresentation, but there have been some decisions under the 1953 provision dealing with false suggestion or representation.

The inclusion of the term “fraud” in the 2013 Act suggests that “false suggestion” and “misrepresentation” are distinct concepts of a lesser severity. This interpretation is supported by earlier case law from both the United Kingdom (UK) and Aotearoa New Zealand,<sup>92</sup> which clarify that one does not have to commit fraud for there to be false suggestion and misrepresentation. What matters is that the behavior is “so material that it can be said that the Crown has been deceived”<sup>93</sup> or “was misled into granting a patent.”<sup>94</sup>

Note that case law assesses false suggestion or misrepresentation vis-à-vis representations of being the “true and first inventor,”<sup>95</sup> as well as representations in the application<sup>96</sup> or in the patent specification.<sup>97</sup> As a result of the latter, a significant number of the cases assess arguments that are very similar to arguments made in relation to lack of utility (that the patent does not do what says it should do, or does not fulfil its promise),<sup>98</sup> and sufficiency (that the specification does not sufficiently allow the person skilled in the art to work the invention).<sup>99</sup>

As to the application, fraud, false suggestion, or misrepresentation can arise from representations on the patent application (documents, forms, and declarations)<sup>100</sup> and from interactions between the patent applicant (or their attorney/agent) and the patent office.<sup>101</sup> Regarding representations on the patent application, T. A. Blanco White has argued that such cases are consistent with the statutory wording, whereas cases more akin to inutility are not.<sup>102</sup> With respect to written and oral interactions with the patent office, let us turn to the Aotearoa New Zealand decision *Dow Chemical v Ishihara Sangyo Kaisha Ltd (ISK)*.<sup>103</sup> In this case, ISK was the patentee, which sued Dow Chemical for infringement. Dow Chemical sought to counterclaim that ISK obtained the patent by false suggestion and representation

<sup>92</sup> See Terrell 1884, 209; Moulton 1913, 212.

<sup>93</sup> *Valensi v British Radio Corp* [1973] RPC 337, 378.

<sup>94</sup> *Smale v North Sails* [1991] 3 NZLR 19, 55

<sup>95</sup> Roberts 1903, 50. See, however, Terrell 1884, 8; cf. Moulton 1913, 213. On more recent Australian cases on false suggestion or misrepresentation based on the incorrect naming of the inventor or applicant, see *JMVB Enterprises Pty Ltd v Camoflag Pty Ltd* [2005] FCA 1474, [134]-[150]; *Atlantis Corp Pty Ltd v Schindler* (1997) 39 IPR 29, 54.

<sup>96</sup> Young et al., 1995, para. 5.130, specifically states that “[t]he false statements could be made either in the application forms or in the complete specification.” Blanco White 1950, 102, also stated that the representation can be on the “application form (or some other formal document), without which the patent would not be granted, or the specification would not be passed by the examining staff of the Patent Office.” Blanco White stated that the words of the legislation (Patents Act 1949 (UK), s 32(1)(j)) “seem clearly to cover representations of this sort, more clearly indeed than they cover the ‘inutility’ type of objection” (at 103). The statement regarding representations in the application remained in future editions. E.g., in Blanco White 1983, para. 4-1001. The Chartered Institute of Patent Agents 1975, 180, stated “This ground can be pleaded in respect of incorrect or misleading statements in the specification, as well as in respect of false statements or declarations in any of the formal documents filed at the Patent Office.”

<sup>97</sup> Blanco White, 1983, para. 4-1002, noted that the majority of cases had been attacks on utility rather than being “concerned with a ‘suggestion’ that affected the granting of the patent.” Blanco White argued that these do not fit the language of the legislation.

<sup>98</sup> Terrell 1895, 74; Blanco White 1950, 101–02; Roberts 1903, 81 and 181.

<sup>99</sup> For example, Moulton 1913, 98, discusses false suggestion under sufficiency. Moulton noted it can be “conveniently considered under the head of insufficiency, although theoretically it has a different origin.” See also Roberts 1903, 186.

<sup>100</sup> See above n 96.

<sup>101</sup> See *Therm-a-Stor Ltd v Weatherseal Windows Ltd* (1984), FSR 323; *Dow Chemical v Ishihara Sangyo Kaisha Ltd (ISK)* (1985), 5 IPR 415.

<sup>102</sup> Blanco White 1983, para. 4-1002.

<sup>103</sup> *Dow Chemical v Ishihara Sangyo Kaisha Ltd (ISK)* (1985), 5 IPR 415.

on two grounds. First, regarding false suggestion within the complete specification, Dow Chemical claimed that multiple “misleading, inadequate or incorrect” descriptions implying that one had made and tested certain samples and compounds, when this was not entirely correct, and to link the filing to a Japanese patent to enjoy its priority, constituted false suggestion that cumulatively materially affected the decision to grant the patent.<sup>104</sup> Justice Eichelbaum declined to strike out this part of the cause of action, finding that it was not plainly untenable and could be decided only at full trial.<sup>105</sup>

Second, regarding misrepresentation during the prosecution process (which includes drafting and filing, as well as post-filing interactions between patent applicants (or their attorneys/agents) and the patent office), Dow Chemical argued that ISK asserting that the patent should be granted with priority to a Japanese patent, and that the complete specification “properly and accurately asserted the preparation examples, compounds, and herbicidal tests” was false representation. In discussing misrepresentation during patent prosecution, Justice Eichelbaum cited *Therm-a-Stor Ltd v Weatherseal Windows Ltd*, which related to interactions between a patent agent and the patent office. The patent agent had informed the patent examiner that they were eager to expedite amendments and finalize the patent due to ongoing infringement concerns. However, the patent agent failed to disclose that the proposed amendments were directly related to the alleged infringement. The England and Wales Court of Appeal agreed with the defendants that proceedings with the patent office “are necessarily ex parte and that they must be approached on the footing of the utmost good faith and full and frank disclosure of all relevant facts.”<sup>106</sup> This is because patent examiners are “fulfilling an exacting and important public function” that relies on “information given to him by the only interested party, the applicant.”<sup>107</sup>

After noting *Therm-a-Stor*, Eichelbaum stated that “There is no scope for an allegation of absence of good faith unless it can be brought under the heading of false suggestion or representation. I see no ground for narrowing the scope of those expressions or limiting the stages of the application process at which they may be invoked, subject always to materiality.”<sup>108</sup> Thus, “[h]aving regard to these considerations and the remarks in the *Therm-a-Stor* case,” Eichelbaum ruled that the counterclaim was not clearly untenable such that it should be struck out.<sup>109</sup> In other words, patent invalidity cannot be founded in the absence of good faith, but that does not mean that the absence of good faith cannot found an allegation of false suggestion or misrepresentation, if it materially affected the grant. In *Therm-a-Stor*, the allegation of false suggestion was based on the patent agent being less than candid. In *Dow Chemical v ISK*, Eichelbaum refused to strike out that false misrepresentation could be based on representations made during the patent prosecution that relate to priority. Note the analogy that can be made between false suggestions/representations in relation to alleged priority documents and disclosures that affects prior art, all of which can affect patentability standards, such as novelty and inventive step.

Earlier cases tended to address only the concept of false suggestion without distinguishing it from false representation. This may be attributed to the legislative phrasing – “false

<sup>104</sup> *Ibid.*, 420–21. There is a history of English and Wales case law assessing false representation in relation to a claimed priority document (which relates to the application rather than the specification); see *The Chartered Institute of Patent Agents* 1975, 6, 9 and 91, citing *Kromschröder's Patent* [1960] RPC 75, *Gumbel's Patent* [1958] RPC 1, *Ajimoto's Application* [1968] RPC 384. See also *Stauffer Chemical Cos Application* [1977] RPC 33

<sup>105</sup> *Dow Chemical v Ishihara Sangyo Kaisha Ltd (ISK)* (1985) 5 IPR 415, 420–21.

<sup>106</sup> *Therm-a-Stor Ltd v Weatherseal Windows Ltd* (1984) FSR 323, 336–7 (emphasis added).

<sup>107</sup> *Therm-a-Stor Ltd v Weatherseal Windows Ltd* (1984) FSR 323, 336–7 (emphasis added).

<sup>108</sup> *Dow Chemical v Ishihara Sangyo Kaisha Ltd (ISK)* (1985) 5 IPR 415, 422.

<sup>109</sup> *Ibid.*, 422.

suggestion or representation” – which arguably conflated the two. Notably, *Dow Chemical v ISK* discussed the two separately as this is how they were pleaded, as discussed in the foregoing; however, Eichelbaum did not discuss the difference between a false suggestion and a false misrepresentation. In contrast to earlier legislation, the 2013 Act clearly distinguishes between “fraud, false suggestion, or a misrepresentation.”<sup>110</sup> Case law preceding the 2013 Act indicates that fraud is something worse than false suggestions or misrepresentation, and, potentially, the standard for showing misrepresentation is different from that for showing false suggestion.

When Aotearoa New Zealand implemented its 2013 Act, it copied the wording from the Australian Patents Act 1990,<sup>111</sup> which has been interpreted and applied by Australian courts.<sup>112</sup> This case law indicates that “fraud” has its common law meaning (though it has never been applied). Other than the addition of “fraud,” there appears to be no substantive difference between the earlier legislative phrase “false suggestion or representation” and the more recent formulation “fraud, false suggestion, or a misrepresentation.” While the Australian courts have indicated that “false suggestion” and “misrepresentation” have different meanings, they have not clearly delineated the two, as in Aotearoa New Zealand,<sup>113</sup> and any difference has thus far not been relevant to any decision.

The lack of definitive case law – in either Aotearoa New Zealand or Australia – provides significant interpretative scope within the definitions of “fraud,” “false suggestion,” and “misrepresentation” in Aotearoa New Zealand. Of course, “fraud” has a well-understood legal meaning in Aotearoa New Zealand law, and it is unlikely to be interpreted wholly differently within patent law. That said, we argue that a failure to correctly use the TK checkbox on one’s patent application could implicate either fraud, false suggestion, or misrepresentation and result in patent invalidity if it materially affected the grant. To illustrate, if an applicant “believe[s] that the invention may be derived from Māori traditional knowledge or from New Zealand indigenous plants or animals” but does not check the box indicating that the “applicant submits the invention is derived from Māori traditional knowledge or from New Zealand indigenous plants or animals,” this could constitute fraud, false suggestion, or misrepresentation, depending on the state of the applicant’s knowledge and their intention. This failure to check the box could mean that relevant prior art is not located (affecting the assessment of novelty and inventive step) or an application is not sent to the PMAC, either of which could materially affect the grant.

It should not matter that the checkbox is not a legally mandatory disclosure. The case law on fraud, false suggestion, and misrepresentation, as discussed in the foregoing, does not necessarily relate to behaviors relating to specific legal requirements but to interactions with the patent office (including withholding information) that patent examiners should be able to rely on to undertake their public functions. The checkbox is part of the application form. It states that applicants should check the box if they “believe that the invention may be derived from Māori traditional knowledge or from New Zealand indigenous plants or animals.” Not checking the box when one does have this belief constitutes fraud, false suggestion, or misrepresentation. If this materially affects the grant, the patent (application) should be revoked (opposed).

<sup>110</sup> This was confirmed in *Apotex Pty Ltd v Les Laboratoires Servier* [2013] FCA 1426, [190], an Australian case dealing with analogous wording.

<sup>111</sup> Patents Act 1990 (Cth), s 138(d) and (e).

<sup>112</sup> See, e.g., *Prestige Group (Australia) Pty Ltd v Dart Industries Inc* (1990) 26 FCR 197; *ICI Chemicals & Polymers v Lubrizol Corp* (1999) 45 IPR 577; *Uniline Australia Ltd v SBriggs Pty Ltd* [2009] FCA 222; *Apotex v Warner Lambert* [2016] FCA 1238. See Bodkin 2019, 441–50.

<sup>113</sup> *Apotex Pty Ltd v Les Laboratoires Servier* [2013] FCA 1426 [190].

Note that the potential use of the fraud, false suggestion, and misrepresentation provision extends beyond the incorrect use of the disclosure checkbox. It could also relate to a suggestion or representation regarding consultation, or some kind of agreement, with Māori and/or kaitiaki, that materially affected the grant of the patent – for example, if an applicant were to suggest that a greater degree of consultation took place than actually did, or were to suggest Māori or kaitiaki have given their permission or agreement when they have not, or that certain benefits were to flow to Māori when they will not. Such behaviors could be false suggestions or misrepresentations that materially affected the grant either because the PMAC might rely on those suggestions or representations to advise that the commercial exploitation would not be contrary to Māori values, or because they affect the context in which the Commissioner considers that advice. A false suggestion or misrepresentation is particularly relevant here, especially given that the test is not a strict “but for” test. The claimant does not need to prove that the Commissioner would have refused the grant but for the misrepresentation. It is sufficient to show that the misrepresentation had a material influence on the decision to grant.

## The WIPO GRATK Treaty

### *Placing limits on domestic law*

The foregoing establishes that IPONZ practice has a checkbox for disclosure on its patent applications, and there are existing repercussions in the law for fraud, false suggestion, or misrepresentation that materially affected the grant, which can relate to any interactions made (or not made, such as not being candid) during the patent prosecution process. Furthermore, the likelihood that not checking the checkbox correctly could materially affect the grant is significant in Aotearoa New Zealand due to the role of the PMAC and how its advice is to be considered by the Commissioner. Signing and ratifying the GRATK Treaty would significantly change this. This is because of the maximum standard that the treaty sets for remedies or sanctions in the event of a failure to disclose. As outlined in the foregoing, contracting parties may only allow for remedies or sanctions in cases of fraud. Contracting parties must “provide an opportunity to rectify a failure to disclose the information” unless there has been “fraudulent conduct or intent.”<sup>114</sup> Post-grant, contracting parties may not “revoke, invalidate or render unenforceable the conferred patent rights,” except where there was “fraudulent intent in regard to the disclosure requirement.”<sup>115</sup> Yet Aotearoa New Zealand allows for opposition, reexamination, and revocation on the basis of false suggestion and misrepresentation, as well as fraud. Opportunities to rectify failures under the Patents Act 2013 are limited and primarily arise either pre-grant in response to opposition proceedings or pre- or post-grant following reexamination.<sup>116</sup>

If Aotearoa New Zealand were to sign and ratify the GRATK Treaty, it would likely have to amend its law so that failure to disclose the source of genetic resources and related TK (per the GRATK Treaty) can only found a successful opposition, reexamination resulting in revocation, or other revocation if the failure constituted fraud. Regarding pre-grant opposition or reexamination, anything less than fraud (including false suggestion and misrepresentation) could only result in the opportunity to rectify the failure. Regarding post-grant reexamination or revocation, false suggestion and misrepresentation in relation to the disclosure could not be the basis of revocation, even if the false suggestion or

<sup>114</sup> WIPO GRATK Treaty 2024, Art. 5.2 and 5.2bis.

<sup>115</sup> *Ibid.*, Art. 5.3 and 5.4.

<sup>116</sup> See n 90.

misrepresentation had a material effect on the grant. If the legislature were to leave “fraud, false suggestion and misrepresentation” for all other non-GR/TK disclosure related interactions with the patent office, there could be different outcomes resulting from a lack of good faith or lack of candor depending on whether it related to the disclosure or another interaction with the patent office. In other words, patent applicants (their attorneys/agents) would get away with more negative behavior (so long that it does not constitute fraud) in relation to the GR/TK disclosure than they would with any other interaction with the patent office; they would be given the opportunity to rectify in situations where rectification is not provided for other failings. Post-grant, it is unclear what the purpose of rectifying would be if it could not affect validity or enforceability. Perhaps the failure in disclosure (i.e., patentee or patent attorney/agent behavior) could not directly affect validity or enforceability, however, the information provided in the rectification could be used in standard revocation proceedings for non-novelty or obviousness, for example.

Notably, the GRATK Treaty says nothing about what the fraud has to cause in order for there to be invalidation. Unlike under existing Aotearoa New Zealand law, the fraud need not materially affect the grant of the patent. This means that it is possible that *any* fraud in relation to the disclosure could result in a successful opposition or revocation, whereas only fraud, false suggestion, or misrepresentation in relation to any other interaction with the patent office that materially affects the grant could result in a successful opposition or revocation. That said, as the GRATK Treaty’s provision on remedies and sanctions sets a maximum standard, it would be possible to implement it more leniently, so that the fraud has to materially affect the grant for there to be a successful opposition or revocation. At the same time, one could see it as logical to distinguish between fraud and false suggestion/misrepresentation in this way; as fraud is a more significant form of misconduct, perhaps there need not be any consequence for there to be no grant or revocation/invalidation.

In light of the foregoing, we argue that Aotearoa New Zealand should not implement the GRATK Treaty. Aotearoa New Zealand’s law and practice already exhibit means to implement disclosure obligations and determine what happens to the disclosure and what could happen for failure to disclose in good faith. Signing and ratifying the GRATK Treaty – with the maximum standard set out in its remedies and sanctions provision – would place restrictions on this.

### *Developing Aotearoa New Zealand law and practice*

While we have argued that Aotearoa New Zealand should not sign the GRATK Treaty, this is not to say that the jurisdiction could not improve its law and practice. This could include learning from the negotiations around the GRATK Treaty. At the time of writing, the Patents Act 2013 was already over a decade old. Though seen as *avant garde* at the time of its passing, the Patents Act 2013 could now be viewed as limited because it only addresses “indigenous plants or animals.” It does not include other life forms, such as bacteria, fungi, or viruses. In contrast, the GRATK Treaty defines “genetic material” broadly as “any material of plant, animal, microbial or other origin containing functional units of heredity.”<sup>117</sup> That said, recall that the Patents Act 2013 leaves significant latitude to the PMAC to create guidelines and advise the Commissioner beyond the remit outlined in the Patents Act 2013. Note also the application discussed in the foregoing pertaining to a bacterial strain that was forwarded to the PMAC for advice. Furthermore, the Commissioner assesses the advice of the Committee when assessing the public order/morality provision, which is broadly drafted. Thus,

<sup>117</sup> WIPO GRATK Treaty 2024, Art. 2. It also states: “‘Genetic resources’ are genetic material of actual or potential value.”

the Committee could be (and has been) broader in its advice (beyond its stipulated functions), and the Commissioner could be broader on the advice they consider. The disclosure checkbox could be worded to be consistent with this.

It is worth noting that the IPONZ checkbox specifies that it is “New Zealand” indigenous species that are of interest. This adds clarity for patent applicants and arguably reflects the intent of the legislature, which used the term “indigenous plants and animals” to address Māori concerns and define a function of the PMAC. In other words, the purpose of the provision was to address Māori concerns such that “indigenous” must relate to Aotearoa New Zealand. However, this is limiting as there are species that are taonga to Māori because they were brought over in the Māori migration to New Zealand. They are not indigenous to New Zealand and so would not be included.<sup>118</sup> In contrast, the GRATK Treaty applies to “the country of origin of the genetic resources” or, where this is not known, the “source of genetic resources” (see Table 1), which is widely defined as:

Refer[ring] to any source from which the applicant has obtained the genetic resources, such as a research center, gene bank, Indigenous Peoples and local communities, the Multilateral System of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), or any other ex situ collection or depository of genetic resources.<sup>119</sup>

Thus, disclosing the source of GRs per the GRATK Treaty is not jurisdictionally limited. If Aotearoa New Zealand were to implement a broader understanding of sources to be disclosed, this could provide more scope to PMAC. It could also allow the patent office to better address the concerns of non-Māori indigenous peoples and local communities.

A significant limitation of the Patents Act 2013 is that it only addresses Māori TK. This reflects its legislative purpose but could be broadened. The GRATK Treaty requires disclosure of the Indigenous peoples or local community “who provided the traditional knowledge associated with genetic resources” or, where this is not known or not relevant, “the source of the traditional knowledge associated with genetic resources.” The “[s]ource of traditional knowledge associated with genetic resources” is widely defined as:

any source from which the applicant has obtained the traditional knowledge associated with genetic resources, such as scientific literature, publicly accessible databases, patent applications and patent publications.<sup>120</sup>

Widening the knowledge sources of concern would be more consistent with the “fraud, false suggestion, or a misrepresentation” provision, which is not tied to specific peoples. Put another way, broadening the text of the checkbox and what must be disclosed would be consistent with the fact that anyone can seek opposition/revocation via the “fraud, false suggestion, or a misrepresentation” provision. Of course, not having a specific advisory

<sup>118</sup> This approach may be contrasted to the process established under the Plant Variety Rights Act 2022 (NZ), which establishes special provisions dealing with “indigenous plant species” and “non-indigenous plant species of significance.” “Non-indigenous plant species of significance” are defined in s 56 as a “plant species (a) believed to have been brought to New Zealand before 1769 on waka migrating from other parts of the Pacific region; and (b) listed in the regulations as a non-indigenous plant species of significance.” The provisions set out in Part 5 of the Act dealing with the role of the Māori Plant Varieties Committee in reviewing applications for plant variety rights apply to applications relating to indigenous plant species or nonindigenous plant species of significance.

<sup>119</sup> WIPO GRATK Treaty 2024, Art. 2.

<sup>120</sup> *Ibid.*

**Table 1.** Comparison of wording of Aotearoa New Zealand law and practice and GRATK Treaty

	Aotearoa New Zealand law and practice	GRATK Treaty
Genetic resource	“indigenous plants or animals”	“the country of origin of the genetic resources” or, where this is not known, the “source of genetic resources”
Traditional knowledge	“Māori traditional knowledge”	the Indigenous peoples or local community “who provided the traditional knowledge associated with genetic resources” or, where this is not known, “the source of the traditional knowledge associated with genetic resources”

committee might make it harder to show that a failure to disclose materially affected the decision to grant, but it would still be possible. For example, not disclosing the use of knowledge from a Canadian First Nation might result in IPONZ not finding relevant sources of prior art that would have rendered the claimed invention not novel or obvious, such that the failure to disclose materially affected the grant.

One way that Aotearoa New Zealand’s law and practice is broader than the GRATK Treaty is that it applies to all Māori “traditional knowledge,” whereas the GRATK Treaty disclosure requirement only applies to GRs and TK associated with GRs (see Table 1). That is, under the GRATK, contracting parties would not have to implement the disclosure requirement more broadly to TK not related to GRs. Note, however, that the substantive provision (Article 3), unlike the provision on remedies and sanctions (Article 5), is a minimum standard. Contracting parties may require more disclosure than that stipulated in the GRATK Treaty.

The GRATK Treaty stipulates that, if the applicant does not know the information they are required to disclose, “each Contracting Party shall require the applicant to make a declaration to that effect, affirming that the content of the declaration is true and correct to the best knowledge of the applicant.”<sup>121</sup> Aotearoa New Zealand could similarly require applicants to sign such a declaration if they do not know the information that the IPONZ patent application requires. However, as argued in the foregoing, we do not view this as necessary, as Aotearoa New Zealand law means that interactions between applicants (and their attorneys/agents) and IPONZ must not constitute fraud, false suggestion, or misrepresentation, which can be grounded in a lack of good faith or candor with the patent office. Of course, implementing such a declaration requirement could be used as a way to reinforce the obligations of applicants and their advisors. Furthermore, the advantage of mandatory requirements (as opposed to uncertainty or choice in application forms and declarations) is that it would be simpler to maintain that a false declaration or representation materially affected the grant, as it was not “a false declaration that the declarant need not have made.”<sup>122</sup>

We add that, because the IPONZ checkbox and the GRATK disclosure requirements are based on subjective knowledge,<sup>123</sup> more than the disclosure is required to assist the patent office and the PMAC in determining derivation and values/morality/public order. Thus, the idea of voluntary databases or registries of mātauranga Māori and kaitiaki relationships has been floating around for many years with the objective of providing a source of information

<sup>121</sup> *Ibid.*, Art. 3.3.

<sup>122</sup> Blanco White 1983, para. 4-1002.

<sup>123</sup> Note that this was a matter of contention in the negotiations of the GRATK Treaty, with certain member states and the Indigenous Caucus arguing that something akin to “best effort” or “due diligence” to learn the source of the GR or ATK should be required.

available for the purposes of examination.<sup>124</sup> They remain controversial due to mistrust in the Crown to oversee such a database, a lack of clarity around how exactly such a registry would function, and the potential to create friction within and between Māori iwi, hapū, and kaitiaki.<sup>125</sup>

Finally, the GRATK Treaty's provision on the possibility to rectify failures to disclose correctly (discussed in the foregoing) implies that it is possible that a patent office could deal with failure to disclose (whether fraudulent or not) outside of an opposition, reexamination, or revocation proceeding. That is, it does not rely on a third party bringing a relevant claim. In contradistinction, Aotearoa New Zealand's "fraud, false suggestion, or a misrepresentation" provision is not a ground for rejecting a patent application during its initial examination; only for opposition, reexamination, or revocation.<sup>126</sup> Aotearoa New Zealand's patent law could be amended to allow for rejecting an application on the basis of fraud, false suggestion, or misrepresentation due to the requirement of candor and good faith in interactions with the patent office.

### Concluding thoughts

Elsewhere, we suggested that the adoption of the GRATK Treaty should not be over-celebrated, as it introduces only a very minor step in the right direction, with further work required to establish positive rights to protect TK and Indigenous knowledge systems more broadly. Herein we argue that Aotearoa New Zealand does not require the step offered by the GRATK Treaty as its domestic laws and practices arguably already offer better mechanisms. The law and practice in Aotearoa New Zealand already have what IPONZ refers to as a TK checkbox (though disclosure is not statutorily required), and case law states that a patent applicant's lack of candor or good faith in interactions with a patent office can constitute false suggestion or misrepresentation. The provision on fraud, false suggestion, and misrepresentation applies to all interactions, regardless of whether they relate to statutorily required information or not. Furthermore, signing and ratifying the treaty would remove flexibility regarding sanctions and remedies. Existing law allows one to oppose, reexamine, or revoke a grant on the basis of fraud, false suggestion, or misrepresentation. The GRATK is narrower, allowing only opposition, reexamination, or revocation (though it also allows for rejection) on the basis of incorrect disclosure if there is fraud.

As argued in this article, Aotearoa New Zealand's law and practice are not perfect, but improving these is not contingent upon signing the GRATK Treaty. It is also worth noting that, because the GRATK Treaty does not grant any rights but is purely administrative, there is no international benefit to becoming a contracting party. That is, Māori would not gain any benefit overseas, as there are no rights to be mutually recognized, for example.

<sup>124</sup> These were recommended in Wai 262, 202–207. In September 2018, MBIE released an Issues Paper and started consultations on the possibility of introducing a disclosure of origin requirement for GRs and TK. See MBIE 2018. See also Lai 2014b, 268–70.

<sup>125</sup> Ad Hoc Open-Ended Inter-sessional Working Group on Article 8(j) and Related Provision of the Convention on Biological Diversity 2007, paras 36–43; Hardison 2005; Bagley 2019. On data sovereignty, see, e.g., Kukutai and Taylor 2016; Walter et al. (eds.) 2021; Walter et al. 2021; Walter and Suina 2019. The much-feted Traditional Knowledge Digital Library in India provides a salient example of such a database established by the state. Originally intended as a tool available to major patent offices of the world to improve examination practice, the contents of the database have subsequently been made publicly available under a subscription model for the purpose of supporting domestic innovation in India. See Indian Government 2022.

<sup>126</sup> Technically, the Commissioner can reexamine an accepted patent application or granted patent of their own accord (Patents Act 2013 (NZ), s 94–95). However, in practice, an external prompt is required for the Commissioner to undertake a reexamination.

**Table 2.** Glossary of Māori Terms<sup>129</sup>

Māori Term	English Meaning
Hapū	Sub-tribe
Iwi	Tribe
Kaitiaki	Guardian
Kaitiakitanga	Guardianship
Mana	Authority or status
Mātauranga Māori	Māori knowledge in its broadest sense
Noa	To be free of tapu (unrestricted)
Taonga	Treasure
Tapu	Sacred (restricted)
Te ao Māori	The Māori worldview
Te Tiriti o Waitangi	Treaty of Waitangi
Tikanga Māori	Māori protocol and practice
Tino rangatiratanga	Chieftainship
Whakapapa	Genealogy or lineage

We cautioned elsewhere that there was the danger that over-celebration of the GRATK Treaty could generate the belief that Indigenous peoples have gained protection and nothing further is required.<sup>127</sup> We note here that this kind of positioning has started to appear in the WIPO IGC negotiations on treaties to protect TK and TCEs.<sup>128</sup> In the 51st session in May/June 2025, only a year after the GRATK Treaty was adopted, in discussions around the mandate for the next biennium, industrialized member states and groupings opposed work on GRs being in the first paragraph of the mandate because of the conclusion of the GRATK Treaty. This did not include Australia and Aotearoa New Zealand, who expressed opposing opinions more in line with China and the Global South, who – consistent with the Indigenous Caucus – insisted that GRs had to continue to be part of the mandate because they were inextricably tied to TK and TCEs, and because the GRATK did not relate to rights but was purely administrative, so GRs had to remain part of the mandate to achieve rights in relation to GRs. Yet many industrialized member states insisted that the work on GRs was complete, resulting in the addition of language to clearly state that no normative work on GRs would be undertaken in the next biennium.

While Aotearoa New Zealand, and any other member states concerned with their Indigenous peoples, must partake in the WIPO IGC in the hope of shaping any agreements that come from it, the analysis in this article underscores that it must not be beholden to international fora and negotiations. International law and the law and practice beyond Aotearoa New Zealand affect Māori interests and all patent applicants from Aotearoa New Zealand. However, this should not restrict Aotearoa New Zealand addressing Māori interests in domestic law. As our foregoing analysis of the GRATK Treaty illustrates, doing so

<sup>127</sup> Lai, Wright, and Goodman 2025.

<sup>128</sup> The observations from the paragraph come from an author's attendance to the 51st session of the WIPO IGC.

<sup>129</sup> For further detail, see Moorfield.

could result in waiting over 20 years to end up with something less than what a member state can easily achieve domestically. The continuing negotiations for TK and TCEs potentially differ from the GRATK Treaty in that they might result in sui generis rights (though certain member states and groupings, such as the United States and the European Union, take the position that a nonbinding measures-based approach is preferable). The idea of such an agreement coming out of a UN body is appealing, but it should not stop the government of Aotearoa New Zealand from looking inward, because looking outward might be distracting and disappointing.

**Acknowledgments.** Our thanks to the New Zealand Royal Society Te Apārangi for supporting this research.

**Funding statement.** This work was undertaken with the support of the New Zealand Royal Society Te Apārangi (Grant No. E4223; Award No. 4315).

**Declaration of conflicting interest.** N/A

## Bibliography

### Primary Sources

- Waitangi Tribunal, *A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Taumata Tuarua* (2011) Wai 262.
- WIPO, Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge (GRATK Treaty), TRT/GRATK/001 (adopted 24 May 2024).
- WTO, Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 UNTS 299; 33 ILM 1197 (adopted on 15 April 1994, entered into force 1 January 1995).

### Secondary Sources

- Bagley, Margo A. 2019. “The Fallacy of Defensive Protection for Traditional Knowledge.” *Washburn Law Journal* 58: 339–63.
- Barclay, Sarah (Principal, AJ Park) and Erica Cassie (Patent Engineer, AJ Park). 2025. “Email - Traditional Knowledge Tick Box.”
- Blanco White, T. A. 1950. *Patents for Inventions*. London, UK: Stevens & Sons Ltd.
- . 1983. *Patents for Inventions*. 5th ed. London, UK: Stevens & Sons Ltd.
- Bodkin, Colin. 2019. *Patent Law in Australia*. 3rd ed. Sydney: Thomson Reuters.
- Bucknell, Duncan (ed). 2011. *Pharmaceutical, Biotechnology, and Chemical Inventions: World Protection and Exploitation*. Vol. I. Oxford: OUP.
- Cowcil, Gaby (Manager Patents, IPONZ). 2025. “Official Information Request.”
- Frankel, Susy and Jessica C. Lai. 2016. *Patent Law and Policy*. Wellington, NZ: LexisNexis.
- Hardison, Preston. 2005. “The Report on Traditional Knowledge Registers (TKRs) and Related Traditional Knowledge Databases (TKDBs)” Prepared for the Secretariat of the Convention on Biological Diversity, UNEP/CBD/WG8J/4/INF/9.
- Heathcote, Marion, and Michael Caine. 2024. “Recognising Source: Historic Treaty on Patents, Genetic Resources and Associated Traditional Knowledge Adopted.” <https://dcc.com/news-and-insights/recognising-source-historic-treaty-on-patents-genetic-resources-and-associated-traditional-knowledge-adopted/>.
- Hille, Kevin, Carwyn Jones, and Damen Ward. 2023. *Treaty Law: Principles of the Treaty of Waitangi in Law and Practice*. Wellington, NZ: Thomson Reuters.
- Indian Government, Press Release. 2022. “Cabinet Approves Widening Access of the Traditional Knowledge Digital Library (TKDL) Database to Users, Besides Patent Offices.” <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1852528>.
- IPONZ. n.d.-a. “Apply for a Patent.” Accessed 17 July 2025. <https://www.iponz.govt.nz/about-ip/patents/apply/>.
- . n.d.-b. “Māori Committees for IP.” Accessed 16 May 2025. [https://www.iponz.govt.nz/get-ip/maori-ip/maori-committees-for-ip/#jump-to-the-m\\_0101ori-advisory-committee-process0](https://www.iponz.govt.nz/get-ip/maori-ip/maori-committees-for-ip/#jump-to-the-m_0101ori-advisory-committee-process0).
- . n.d.-c. Patent Examination Manual. “Section 15: Inventions Contrary to Public Order or Morality not Patentable Inventions.” Accessed 16 May 2025. <https://www.iponz.govt.nz/about-ip/patents/examination-manual/current/inventions-contrary-to-public-order-or-morality-not-patentable-inventions/>.

- . 2008. “Business Update/Patent Guidelines: Contrary to Morality/Raising Objections under Section 17(1).”
- . 2016. “Protecting Intellectual Property with a Māori Cultural Element: User Guide.”
- Jayaswal, Rajeev. 2024. “India Says WIPO Treaty a Significant Win for Global South.” *Hindustan Times*. <https://www.hindustantimes.com/india-news/india-says-wipo-treaty-a-significant-win-for-global-south-101716734414688.html>.
- Kukutai, Tahu, and John Taylor (eds). 2016. *Indigenous Data Sovereignty: Towards an Agenda*. Canberra, Cth: ANU Press.
- Lai, Jessica C. 2014a. “Māori Traditional Knowledge and New Zealand Patent Law: The 2013 Act and the Dawn of a New Era?” *Journal of World Intellectual Property* 17 (1–2): 34–46.
- . 2014b. *Indigenous Cultural Heritage and Intellectual Property Rights: Learning from the New Zealand Experience?* Heidelberg: Springer.
- . 2019. “A Successful Recalibration of Patent Law vis-à-vis Mātauranga Māori? A Case Study of Mānuka (*Leptospermum Scoparium*).” In *The Object and Purpose of Intellectual Property*, edited by Frankel Susy. Cheltenham, UK: Edward Elgar.
- , et al. 2019. “Māori Knowledge under the Microscope: Appropriation and Patenting of Māori Knowledge and Resources.” *Journal of World Intellectual Property* 22 (3–4): 205–33.
- Lai, Jessica C., Evana Wright, and Jordana R. Goodman. 2025. “Intellectual Property at a Crossroads: The Knowledge and Resources of Indigenous Peoples and Local Communities.” *Journal of World Intellectual Property*. <https://doi.org/10.1111/jwip.12359>.
- MBIE 2018. “Discussion Paper: Disclosure of Origin of Genetic Resources and Traditional Knowledge in the Patents Regime.”
- MED. 2002. “Review of the Patents Act 1953: Boundaries to Patentability.” Discussion Paper.
- Moorfield, John C. “Te Aka Māori-English, English-Māori Dictionary and Index.” <https://maoridictionary.co.nz/>.
- Moss, Merick (OIA Officer, IPONZ). 2025. “Official Information Request.”
- Moulton, H. Fletcher. 1913. *The Present Law and Practice Relating to Letters Patent for Inventions*. London, UK: Butterworth & Co.
- Okediji, Ruth L. 2019. “A Tiered Approach to Rights in Traditional Knowledge.” *Washburn Law Journal* 58: 271–322.
- Orange, Claudia. 2021. *The Treaty of Waitangi | Te Tiriti o Waitangi: An Illustrated History*. Wellington, NZ: BWB.
- Raven et al., Miri. 2024. “Patents Based on Traditional Knowledge Are Often “Biopiracy”. A New International Treaty Will Finally Combat This.” *The Conversation*. <https://theconversation.com/patents-based-on-traditional-knowledge-are-often-biopiracy-a-new-international-treaty-will-finally-combat-this-231272>.
- Roberts, James. 1903. *The Grant and Validity of British Patents for Inventions*. London, UK: John Murray.
- Terrell, Thomas. 1884. *The Law and Practice Relating to Letters Patent for Invention*. London, UK: Henry Sweet.
- . 1895. *The Law and Practice Relating to Letters Patent for Invention*. 3rd ed. London, UK: Sweet & Maxwell.
- The Chartered Institute of Patent Agents. 1975. *Patent Law of the United Kingdom*. London, UK: Sweet & Maxwell.
- UN. 2024. “Nations Agree Landmark Treaty on Traditional Knowledge, Protecting Indigenous Peoples’ Rights.” *UN News*. <https://news.un.org/en/story/2024/05/1150231>.
- Volchok, Daniel S., Thomas G. Saunders, and Laura E. Powell. 2024. “World Intellectual Property Organization Adopts Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge.” <https://www.wilmerhale.com/insights/client-alerts/20240826-wipo-adopts-treaty-on-intellectual-property-genetic-resources-and-associated-traditional-knowledge>.
- Walter, Maggie, and Michele Suina. 2019. “Indigenous Data, Indigenous Methodologies and Indigenous Data Sovereignty.” *International Journal of Social Research Methodology* 22 (3): 233–43.
- Walter, Maggie, et al. (eds). 2021. *Indigenous Data Sovereignty and Policy*. Abingdon, UK: Routledge.
- , et al. 2021. “Indigenous Data Sovereignty in the Era of Big Data and Open Data.” *Australian Journal of Social Issues* 56 (2): 143–56.
- WIPO. 2024. “WIPO Member States Adopt Historic New Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge.” Press Release PR/2024/919. [https://www.wipo.int/pressroom/en/articles/2024/article\\_0007.html](https://www.wipo.int/pressroom/en/articles/2024/article_0007.html).
- Wright, Evana. 2020. *Protecting Traditional Knowledge: Lessons from Global Case Studies*. Cheltenham, UK: Edward Elgar.
- Wright, Evana, and Daniel Robinson. 2024. “The Patents Māori Advisory Committee of Aotearoa New Zealand: Lessons for Indigenous Knowledge Protection.” *Journal of World Intellectual Property* 27 (2): 222–41.
- Young, David, et al., 1995. *Terrell on the Law of Patents*. 14th ed. London, UK: Sweet & Maxwell.

---

**Cite this article:** Lai, Jessica C. and Evana Wright. 2026. “Patent law, traditional knowledge, and disclosure practices in Aotearoa New Zealand.” *International Journal of Cultural Property* 1–24. <https://doi.org/10.1017/S0940739125100192>