



# Patents Act 1977

## 1977 CHAPTER 37

### PART III

#### MISCELLANEOUS AND GENERAL

##### *Legal Proceedings*

#### [<sup>F1</sup>96 **The Patents Court.**

- (1) There shall be constituted, as part of the Chancery Division of the High Court, a Patents Court to take such proceedings relating to patents and other matters as may be prescribed by rules of court.
- (2) The judges of the Patents Court shall be such of the puisne judges of the High Court as the Lord Chancellor may from time to time nominate.
- (3) The foregoing provisions of this section shall not be taken as prejudicing the provisions of the <sup>M1</sup>Supreme Court of Judicature (Consolidation) Act 1925 which enable the whole jurisdiction of the High Court to be exercised by any judge of that court.
- (4) Rules of court shall make provision for the appointment of scientific advisers to assist the Patents Court in proceedings under this Act and for regulating the functions of such advisers.
- (5) The remuneration of any such adviser shall be determined by the Lord Chancellor with the consent of the Minister for the Civil Service and shall be defrayed out of moneys provided by Parliament.]

#### **Textual Amendments**

**F1** S. 96 repealed (E.W.) by [Supreme Court Act 1981 \(c. 54, SIF 37\)](#), s. 152(4), [Sch. 7](#)

#### **Marginal Citations**

**M1** 1925 c. 49.

*Status: Point in time view as at 31/01/1997. This version of this part contains provisions that are not valid for this point in time.*

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## 97 Appeals from the comptroller.

- (1) Except as provided by subsection (4) below, an appeal shall lie to the Patents Court from any decision of the comptroller under this Act or rules except any of the following decisions, that is to say—
- (a) a decision falling within section 14(7) above;
  - (b) a decision under section 16(2) above to omit matter from a specification;
  - (c) a decision to give directions under subsection (1) or (2) of section 22 above;
  - (d) a decision under rules which is excepted by rules from the right of appeal conferred by this section.
- (2) For the purpose of hearing appeals under this section the Patents Court may consist of one or more judges of that court in accordance with directions given by or on behalf of the Lord Chancellor; [F<sup>2</sup>and the Patents Court shall not be treated as a divisional court for the purposes of section 31(1)(f) of the M<sup>2</sup>Supreme Court of Judicature (Consolidation) Act 1925 (appeals from divisional courts).]
- (3) An appeal shall not lie to the Court of Appeal from a decision of the Patents Court on appeal from a decision of the comptroller under this Act or rules—
- (a) except where the comptroller’s decision was given under section 8, 12, 18, 20, 27, 37, 40, 61, 72, 73 or 75 above; or
  - (b) except where the ground of appeal is that the decision of the Patents Court is wrong in law;
- but an appeal shall only lie to the Court of Appeal under this section if leave to appeal is given by the Patents Court or the Court of Appeal.
- (4) An appeal shall lie to the Court of Session from any decision of the comptroller in proceedings which under rules are held in Scotland, except any decision mentioned in paragraphs (a) to (d) of subsection (1) above.
- (5) An appeal shall not lie to the Inner House of the Court of Session from a decision of an Outer House judge on appeal from a decision of the comptroller under this Act or rules—
- (a) except where the comptroller’s decision was given under section 8, 12, 18, 20, 27, 37, 40, 61, 72, 73 or 75 above; or
  - (b) except where the ground of appeal is that the decision of the Outer House judge is wrong in law.

### Textual Amendments

**F2** S. 97(2): from “and” onwards repealed (E.W.) by [Supreme Court Act 1981 \(c. 54, SIF 37\)](#), [Sch. 7](#)

### Marginal Citations

**M2** 1925 c. 49.

## 98 Proceedings in Scotland.

- (1) In Scotland proceedings relating primarily to patents (other than proceedings before the comptroller) shall be competent in the Court of Session only, and any jurisdiction of the sheriff court relating to patents is hereby abolished except in relation to questions which are incidental to the issue in proceedings which are otherwise competent there.

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- (2) The remuneration of any assessor appointed to assist the court in proceedings under this Act in the Court of Session shall be determined by the Lord President of the Court of Session with the consent of the [<sup>F3</sup>Treasury] and shall be defrayed out of moneys provided by Parliament.

#### Textual Amendments

**F3** Words substituted by virtue of [S.I. 1981/1670](#) arts. 2(2), 3(5)

### 99 General powers of the court.

The court may, for the purpose of determining any question in the exercise of its original or appellate jurisdiction under this Act or any treaty or international convention to which the United Kingdom is a party, make any order or exercise any other power which the comptroller could have made or exercised for the purpose of determining that question.

#### [<sup>F4</sup>99A Power of Patents Court to order report.

- (1) Rules of court shall make provision empowering the Patents Court in any proceedings before it under this Act, on or without the application of any party, to order the Patent Office to inquire into and report on any question of fact or opinion.
- (2) Where the court makes such an order on the application of a party, the fee payable to the Patent Office shall be at such rate as may be determined in accordance with rules of court and shall be costs of the proceedings unless otherwise ordered by the court.
- (3) Where the court makes such an order of its own motion, the fee payable to the Patent Office shall be at such rate as may be determined by the Lord Chancellor with the approval of the Treasury and shall be paid out of money provided by Parliament.]

#### Textual Amendments

**F4** [Ss. 99A, 99B](#) inserted by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), s. 295, [Sch. 5 para. 26](#)

#### [<sup>F5</sup>99B Power of Court of Session to order report.

- (1) In any proceedings before the Court of Session under this Act the court may, either of its own volition or on the application of any party, order the Patent Office to inquire into and report on any question of fact or opinion.
- (2) Where the court makes an order under subsection (1) above of its own volition the fee payable to the Patent Office shall be at such rate as may be determined by the Lord President of the Court of Session with the consent of the Treasury and shall be defrayed out of moneys provided by Parliament.
- (3) Where the court makes an order under subsection (1) above on the application of a party, the fee payable to the Patent Office shall be at such rate as may be provided for in rules of court and shall be treated as expenses in the cause.]

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#### Textual Amendments

**F5** Ss. 99A, 99B inserted by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), s. 295, **Sch. 5 para. 26**

### 100 Burden of proof in certain cases.

- (1) If the invention for which a patent is granted is a process for obtaining a new product, the same product produced by a person other than the proprietor of the patent or a licensee of his shall, unless the contrary is proved, be taken in any proceedings to have been obtained by that process.
- (2) In considering whether a party has discharged the burden imposed upon him by this section, the court shall not require him to disclose any manufacturing or commercial secrets if it appears to the court that it would be unreasonable to do so.

### 101 Exercise of comptroller's discretionary powers.

Without prejudice to any rule of law, the comptroller shall give any party to a proceeding before him an opportunity of being heard before exercising adversely to that party any discretion vested in the comptroller by this Act or rules.

### [<sup>F6</sup>102 Right of audience, &c. in proceedings before comptroller.

- (1) A party to proceedings before the comptroller under this Act, or under any treaty or international convention to which the United Kingdom is a party, may appear before the comptroller in person or be represented by any person whom he desires to represent him.
- (2) No offence is committed under the enactments relating to the preparation of documents by persons not legally qualified by reason only of the preparation by any person of a document, other than a deed, for use in such proceedings.
- (3) Subsection (1) has effect subject to rules made under section 281 of the Copyright, Designs and Patents Act 1988 (power of comptroller to refuse to recognise certain agents).
- (4) In its application to proceedings in relation to applications for, or otherwise in connection with, European patents, this section has effect subject to any restrictions imposed by or under the European Patent Convention.

[ Nothing in this section shall be taken to limit the right to draw or prepare deeds given <sup>F7</sup>(5) to a registered patent agent by section 68 of the Courts and Legal Services Act 1990.]

#### Textual Amendments

**F6** S. 102, 102A substituted by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), s. 295, **Sch. 5 para. 27**

**F7** Subsection added by [Courts and Legal Services Act 1990 \(c. 41, SIF 37\)](#), s. 125(3), **Sch. 18 para. 20(1)**

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### [<sup>F8</sup>102A Right of audience, &c. in proceedings on appeal from the comptroller.

- (1) A solicitor of the Supreme Court may appear and be heard on behalf of any party to an appeal under this Act from the comptroller to the Patents Court.
- (2) A registered patent agent or a member of the Bar not in actual practice may do, in or in connection with proceedings on an appeal under this Act from the comptroller to the Patents Court, anything which a solicitor of the Supreme Court might do, other than prepare a deed.
- (3) The Lord Chancellor may by regulations—
  - (a) provide that the right conferred by subsection (2) shall be subject to such conditions and restrictions as appear to the Lord Chancellor to be necessary or expedient, and
  - (b) apply to persons exercising that right such statutory provisions, rules of court and other rules of law and practice applying to solicitors as may be specified in the regulations;and different provision may be made for different descriptions of proceedings.
- (4) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) This section is without prejudice to the right of counsel to appear before the High Court.

[ Nothing in this section shall be taken to limit the right to draw or prepare deeds given <sup>F9</sup>(6) to a registered patent agent by section 68 of the Courts and Legal Services Act 1990.]

#### Textual Amendments

- F8** S. 102, 102A substituted by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), s. 295, [Sch. 5 para. 27](#)
- F9** Subsection added by [Courts and Legal Services Act 1990 \(c. 41, SIF 37\)](#), s. 125(3), [Sch. 18 para. 20\(1\)](#)

### 103 Extension of privilege for communications with solicitors relating to patent proceedings.

- (1) It is hereby declared that the rule of law which confers privilege from disclosure in legal proceedings in respect of communications made with a solicitor or a person acting on his behalf, or in relation to information obtained or supplied for submission to a solicitor or a person acting on his behalf, for the purpose of any pending or contemplated proceedings before a court in the United Kingdom extends to such communications so made for the purpose of any pending or contemplated—
  - (a) proceedings before the comptroller under this Act or any of the relevant conventions, or
  - (b) proceedings before the relevant convention court under any of those conventions.
- (2) In this section—

“legal proceedings” includes proceedings before the comptroller;

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the references to legal proceedings and pending or contemplated proceedings include references to applications for a patent or a European patent and to international applications for a patent; and

“the relevant conventions” means the European Patent Convention, the Community Patent Convention and the Patent Co-operation Treaty.

(3) This section shall not extend to Scotland.

**Extent Information**

**E1** [S. 103](#) does not extend to Scotland, the Channel Islands nor the Colonies.

**Modifications etc. (not altering text)**

**C1** [S. 103](#) amended (E.W.) (1.1.1992) by [S.I. 1991/2684](#), arts. 2, 4, 5, [Sch.1](#).

**104 Privilege for communications with patent agents relating to patent proceedings.**

F10  
 .....

**Textual Amendments**

**F10** [S. 104](#) repealed by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), ss. 303(2), [Sch. 8](#)

**105 Extension of privilege in Scotland for communications relating to patent proceedings.**

[<sup>F11</sup>(1) It is hereby declared that in Scotland the rules of law which confer privilege from disclosure in legal proceedings in respect of communications, reports or other documents (by whomsoever made) made for the purpose of any pending or contemplated proceedings in a court in the United Kingdom extend to communications, reports or other documents made for the purpose of patent proceedings.]

[<sup>F12</sup>(2) In this section—

“patent proceedings” means proceedings under this Act or any of the relevant conventions, before the court, the comptroller or the relevant convention court, whether contested or uncontested and including an application for a patent; and

“the relevant conventions” means the European Patent Convention, the Community Patent Convention and the Patent Co-operation Treaty.]

**Textual Amendments**

**F11** [S. 105](#): the existing text is renumbered as s. 105(1) and the words “within the meaning of section 104 above” are repealed by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), ss. 303(1), 303(2), [Sch. 7 para. 21](#), [Sch. 8](#)

**F12** [S. 105\(2\)](#) inserted by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), s. 303(1), [Sch. 7 para. 21](#)

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## **106 Costs and expenses in proceedings before the Court under s. 40.**

- (1) In proceedings before the court under section 40 above (whether on an application or on appeal to the court), the court, in determining whether to award costs or expenses to any party and what costs or expenses to award, shall have regard to all the relevant circumstances, including the financial position of the parties.
- (2) If in any such proceedings the Patents Court directs that any costs of one party shall be paid by another party, the court may settle the amount of the costs by fixing a lump sum or may direct that the costs shall be taxed on a scale specified by the court, being a scale of costs prescribed by the Rules of the Supreme Court or by the County Court Rules.

## **107 Costs and expenses in proceedings before the comptroller.**

- (1) The comptroller may, in proceedings before him under this Act, by order award to any party such costs or, in Scotland, such expenses as he may consider reasonable and direct how and by what parties they are to be paid.
- (2) In England and Wales any costs awarded under this section shall, if a county court so orders, be recoverable by execution issued from the county court or otherwise as if they were payable under an order of that court.
- (3) In Scotland any order under this section for the payment of expenses may be enforced in like manner as [F13a recorded decree arbitral][F13an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.]
- (4) If any of the following persons, that is to say—
  - (a) any person by whom a reference is made to the comptroller under section 8, 12 or 37 above;
  - (b) any person by whom an application is made to the comptroller for the revocation of a patent;
  - (c) any person by whom notice of opposition is given to the comptroller under section 27(5), 29(2), 47(6) or 52(1) above, or section 117(2) below;neither resides nor carries on business in the United Kingdom, the comptroller may require him to give security for the costs or expenses of the proceedings and in default of such security being given may treat the reference, application or notice as abandoned.
- (5) In Northern Ireland any order under this section for the payment of costs may be enforced as if it were a money judgment.

### **Textual Amendments**

**F13** Words commencing “an extract registered” substituted (S.) for the words “a recorded decree arbitral” by [Debtors \(Scotland\) Act 1987 \(c. 18, SIF 45:2\)](#), s. 108(1), Sch. 6 paras. 1, **20**

## **108 Licences granted by order of comptroller.**

Any order for the grant of a licence under section 11, 38, 48 or 49 above shall, without prejudice to any other method of enforcement, have effect as if it were a deed, executed



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by the proprietor of the patent and all other necessary parties, granting a licence in accordance with the order.

### *Offences*

#### **109 Falsification of register etc.**

If a person makes or causes to be made a false entry in any register kept under this Act, or a writing falsely purporting to be a copy or reproduction of an entry in any such register, or produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, he shall be liable—

- (a) on summary conviction, to a fine not exceeding £1,000,
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

#### **110 Unauthorised claim of patent rights.**

- (1) If a person falsely represents that anything disposed of by him for value is a patented product he shall, subject to the following provisions of this section, be liable on summary conviction to a fine not exceeding [<sup>F14</sup>level 3 on the standard scale]
- (2) For the purposes of subsection (1) above a person who for value disposes of an article having stamped, engraved or impressed on it or otherwise applied to it the word “patent” or “patented” or anything expressing or implying that the article is a patented product, shall be taken to represent that the article is a patented product.
- (3) Subsection (1) above does not apply where the representation is made in respect of a product after the patent for that product or, as the case may be, the process in question has expired or been revoked and before the end of a period which is reasonably sufficient to enable the accused to take steps to ensure that the representation is not made (or does not continue to be made).
- (4) In proceedings for an offence under this section it shall be a defence for the accused to prove that he used due diligence to prevent the commission of the offence.

#### **Textual Amendments**

**F14** Words substituted by virtue of (E.W.) [Criminal Justice Act 1982 \(c. 48, SIF 39:1\), s. 46](#) and (S.) [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\), s. 289G](#) and (N.I.) [S.I. 1984/703 \(N.I. 3\), art. 5](#)

#### **111 Unauthorised claim that patent has been applied for.**

- (1) If a person represents that a patent has been applied for in respect of any article disposed of for value by him and—
  - (a) no such application has been made, or
  - (b) any such application has been refused or withdrawn,
 he shall, subject to the following provisions of this section, be liable on summary conviction to a fine not exceeding [<sup>F15</sup>level 3 on the standard scale]



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- (2) Subsection (1)(b) above does not apply where the representation is made (or continues to be made) before the expiry of a period which commences with the refusal or withdrawal and which is reasonably sufficient to enable the accused to take steps to ensure that the representation is not made (or does not continue to be made).
- (3) For the purposes of subsection (1) above a person who for value disposes of an article having stamped, engraved or impressed on it or otherwise applied to it the words “patent applied for” or “patent pending”, or anything expressing or implying that a patent has been applied for in respect of the article, shall be taken to represent that a patent has been applied for in respect of it.
- (4) In any proceedings for an offence under this section it shall be a defence for the accused to prove that he used due diligence to prevent the commission of such an offence.

#### Textual Amendments

- F15** Words substituted by virtue of (E.W.) [Criminal Justice Act 1982 \(c. 48, SIF 39:1\), s. 46](#) and (S.) [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\), s. 289G](#) and (N.I.) [S.I. 1984/703 \(N.I. 3\), art. 5](#)

### 112 Misuse of title “Patent Office”.

If any person uses on his place of business, or on any document issued by him, or otherwise, the words “Patent Office” or any other words suggesting that his place of business is, or is officially connected with, the Patent Office, he shall be liable on summary conviction to a fine not exceeding [<sup>F16</sup>level 4 on the standard scale]

#### Textual Amendments

- F16** Words substituted by virtue of (E.W.) [Criminal Justice Act 1982 \(c. 48, SIF 39:1\), s. 46](#) and (S.) [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\), s. 289G](#) and (N.I.) [S.I. 1984/703 \(N.I. 3\), art. 5](#)

#### Modifications etc. (not altering text)

- C2** [S. 112](#) amended (3.1.1995) by [1994 c. 40, ss. 76, 82\(2\)\(f\), Sch. 16 para. 4](#)

### 113 Offences by corporations.

- (1) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

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**Textual Amendments**

**F17** S. 114 repealed by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), s. 303(2), **Sch. 8**

**115** ..... **F18**

**Textual Amendments**

**F18** S. 115 repealed by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), s. 303(2), **Sch. 8**

*Immunity of department*

**116 Immunity of department as regards official acts.**

Neither the Secretary of State nor any officer of his—

- (a) shall be taken to warrant the validity of any patent granted under this Act or any treaty or international convention to which the United Kingdom is a party; or
- (b) shall incur any liability by reason of or in connection with any examination or investigation required or authorised by this Act or any such treaty or convention, or any report or other proceedings consequent on any such examination or investigation.

*Administrative provisions*

**117 Correction of errors in patents and applications.**

- (1) The comptroller may, subject to any provision of rules, correct any error of translation or transcription, clerical error or mistake in any specification of a patent or application for a patent or any document filed in connection with a patent or such an application.
- (2) Where the comptroller is requested to correct such an error or mistake, any person may in accordance with rules give the comptroller notice of opposition to the request and the comptroller shall determine the matter.

**118 Information about patent applications and patents, and inspection of documents.**

- (1) After publication of an application for a patent in accordance with section 16 above the comptroller shall on a request being made to him in the prescribed manner and on payment of the prescribed fee (if any) give the person making the request such information, and permit him to inspect such documents, relating to the application or to any patent granted in pursuance of the application as may be specified in the request, subject, however, to any prescribed restrictions.
- (2) Subject to the following provisions of this section, until an application for a patent is so published documents or information constituting or relating to the application shall not, without the consent of the applicant, be published or communicated to any person by the comptroller.

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- (3) Subsection (2) above shall not prevent the comptroller from—
- (a) sending the European Patent Office information which it is his duty to send that office in accordance with any provision of the European Patent Convention; or
  - (b) publishing or communicating to others any prescribed bibliographic information about an unpublished application for a patent;
- nor shall that subsection prevent the Secretary of State from inspecting or authorising the inspection of an application for a patent or any connected documents under <sup>[F19]</sup>section 22(6) above].
- (4) Where a person is notified that an application for a patent has been made, but not published in accordance with section 16 above, and that the applicant will, if the patent is granted, bring proceedings against that person in the event of his doing an act specified in the notification after the application is so published, that person may make a request under subsection (1) above, notwithstanding that the application has not been published, and that subsection shall apply accordingly.
- (5) Where an application for a patent is filed, but not published, and a new application is filed in respect of any part of the subject-matter of the earlier application (either in accordance with rules or in pursuance of an order under section 8 above) and is published, any person may make a request under subsection (1) above relating to the earlier application and on payment of the prescribed fee the comptroller shall give him such information and permit him to inspect such documents as could have been given or inspected if the earlier application had been published.

#### Textual Amendments

**F19** Words substituted by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), s. 295, [Sch. 5 para. 28](#)

#### **119 Service by post.**

Any notice required or authorised to be given by this Act or rules, and any application or other document so authorised or required to be made or filed, may be given, made or filed by post.

#### **120 Hours of business and excluded days.**

- (1) Rules may specify the hour at which the Patent Office shall be taken to be closed on any day for purposes of the transaction by the public of business under this Act or of any class of such business, and may specify days as excluded days for any such purposes.
- (2) Any business done under this Act on any day after the hour so specified in relation to business of that class, or on a day which is an excluded day in relation to business of that class, shall be taken to have been done on the next following day not being an excluded day; and where the time for doing anything under this Act expires on an excluded day that time shall be extended to the next following day not being an excluded day.

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## 121 Comptroller’s annual report.

Before 1st June in every year the comptroller shall cause to be laid before both Houses of Parliament a report with respect to the execution of this Act and the discharge of his functions under the European Patent Convention, the Community Patent Convention and the Patent Co-operation Treaty, and every such report shall include an account of all fees, salaries and allowances, and other money received and paid by him under this Act, those conventions and that treaty during the previous year.

### Modifications etc. (not altering text)

C3 S. 121 amended (31.10.1994) by 1994 c. 26, s. 71(1); S.I. 1994/2550, art. 2

## *Supplemental*

## 122 Crown’s right to sell forfeited articles.

Nothing in this Act affects the right of the Crown or any person deriving title directly or indirectly from the Crown to dispose of or use articles forfeited under the laws relating to customs or excise.

## 123 Rules.

- (1) The Secretary of State may make such rules as he thinks expedient for regulating the business of the Patent Office in relation to patents and applications for patents (including European patents, applications for European patents and international applications for patents) and for regulating all matters placed by this Act under the direction or control of the comptroller; and in this Act, except so far as the context otherwise requires, “prescribed” means prescribed by rules and “rules” means rules made under this section.
- (2) Without prejudice to the generality of subsection (1) above, rules may make provision—
  - (a) prescribing the form and contents of applications for patents and other documents which may be filed at the Patent Office and requiring copies to be furnished of any such documents;
  - (b) regulating the procedure to be followed in connection with any proceeding or other matter before the comptroller or the Patent Office and authorising the rectification of irregularities of procedure;
  - (c) requiring fees to be paid in connection with any such proceeding or matter or in connection with the provision of any service by the Patent Office and providing for the remission of fees in the prescribed circumstances;
  - (d) regulating the mode of giving evidence in any such proceeding and empowering the comptroller to compel the attendance of witnesses and the discovery of and production of documents;
  - (e) requiring the comptroller to advertise any proposed amendments of patents and any other prescribed matters, including any prescribed steps in any such proceeding;
  - (f) requiring the comptroller to hold proceedings in Scotland in such circumstances as may be specified in the rules where there is more than one

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party to proceedings under section 8, 12, 37, 40(1) or (2), 41(8), 61(3), 71 or 72 above;

- (g) providing for the appointment of advisers to assist the comptroller in any proceeding before him;
- (h) prescribing time limits for doing anything required to be done in connection with any such proceeding by this Act or the rules and providing for the alteration of any period of time specified in this Act or the rules;
- (i) giving effect to the right of an inventor of an invention to be mentioned in an application for a patent for the invention;
- (j) without prejudice to any other provision of this Act, requiring and regulating the translation of documents in connection with an application for a patent or a European patent or an international application for a patent and the filing and authentication of any such translations;
- (k) .....<sup>F20</sup>
- (l) providing for the publication and sale of documents in the Patent Office and of information about such documents.

(3) Rules may make different provision for different cases.

[<sup>F21</sup>(3A) It is hereby declared that rules—

- (a) authorising the rectification of irregularities of procedure, or
- (b) providing for the alteration of any period of time,

may authorise the comptroller to extend or further extend any period notwithstanding that the period has already expired.]

(4) Rules prescribing fees shall not be made except with the consent of the Treasury.

(5) The remuneration of any adviser appointed under rules to assist the comptroller in any proceeding shall be determined by the Secretary of State with the consent of the [<sup>F21</sup>Treasury] and shall be defrayed out of moneys provided by Parliament.

(6) Rules shall provide for the publication by the comptroller of a journal (in this Act referred to as “the journal”) containing particulars of applications for and grants of patents, and of other proceedings under this Act.

(7) Rules shall require or authorise the comptroller to make arrangements for the publication of reports of cases relating to patents, trade marks [<sup>F22</sup>registered designs or design right] decided by him and of cases relating to patents (whether under this Act or otherwise) trade marks, registered designs [<sup>F23</sup>, copyright and design right] decided by any court or body (whether in the United Kingdom or elsewhere).

#### Textual Amendments

**F20** S. 123(2)(k) repealed by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), s. 303(2), **Sch. 8**

**F21** Words substituted by virtue of [S.I. 1981/1670](#) arts. 2, 3(5)

**F22** Words substituted by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), s. 303(1), **Sch. 7 para. 22(a)**

**F23** Words substituted by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), s. 303(1), **Sch. 7 para. 22(b)**

#### Modifications etc. (not altering text)

**C4** S. 123 extended (10.12.1992) by [S.I. 1992/3091](#), **reg. 4(2)**

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S. 123 extended (1.3.2002) by [The Patents and Plant Variety Rights \(Compulsory Licensing\) Regulations 2002 \(S.I. 2002/247\)](#), **reg. 20**

**C5** S. 123(1) amended (2.1.1993) by [S.I. 1992/3091](#), **reg. 4(1)**

**C6** S. 123(2)-(7) applied (10.12.1992) by [S.I. 1992/3091](#), reg. 4(2)

**C7** S. 123(7) extended by [Patents, Designs and Marks Act 1986 \(c. 39, SIF 67A\)](#), s. 2(3), **Sch. 2 Pt. I para. 1(2)(e)(iii)**

S. 123(7) amended (31.10.1994) by [1994 c. 26, s. 106\(1\)](#), **Sch. 4 para. 1(2)**; [S.I. 1994/2550](#), **art. 2**

## 124 Rules, regulations and orders; supplementary.

- (1) Any power conferred on the Secretary of State by this Act to make rules, regulations or orders shall be exercisable by statutory instrument.
- (2) Any Order in Council and any statutory instrument containing an order, rules or regulations under this Act, other than an order or rule required to be laid before Parliament in draft or an order under section 132(5) below, shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Any Order in Council or order under any provision of this Act may be varied or revoked by a subsequent order.

### Modifications etc. (not altering text)

**C8** [S. 124](#) applied (10.12.1992) by [S.I. 1992/3091](#), **reg. 4(2)**

**C9** [S. 124](#) applied (1.3.2002) by [The Patents and Plant Variety Rights \(Compulsory Licensing\) Regulations 2002 \(S.I. 2002/247\)](#), **reg. 20**

## 125 Extent of invention.

- (1) For the purposes of this Act an invention for a patent for which an application has been made or for which a patent has been granted shall, unless the context otherwise requires, be taken to be that specified in a claim of the specification of the application or patent, as the case may be, as interpreted by the description and any drawings contained in that specification, and the extent of the protection conferred by a patent or application for a patent shall be determined accordingly.
- (2) It is hereby declared for the avoidance of doubt that where more than one invention is specified in any such claim, each invention may have a different priority date under section 5 above.
- (3) The Protocol on the Interpretation of Article 69 of the European Patent Convention (which Article contains a provision corresponding to subsection (1) above) shall, as for the time being in force, apply for the purposes of subsection (1) above as it applies for the purposes of that Article.

## <sup>F24</sup>125A Disclosure of invention by specification: availability of samples of micro-organisms.

- (1) Provision may be made by rules prescribing the circumstances in which the specification of an application for a patent, or of a patent, for an invention which requires for its performance the use of a micro-organism is to be treated as disclosing



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the invention in a manner which is clear enough and complete enough for the invention to be performed by a person skilled in the art.

- (2) The rules may in particular require the applicant or patentee—
  - (a) to take such steps as may be prescribed for the purposes of making available to the public samples of the micro-organism, and
  - (b) not to impose or maintain restrictions on the uses to which such samples may be put, except as may be prescribed.
- (3) The rules may provide that, in such cases as may be prescribed, samples need only be made available to such persons or descriptions of persons as may be prescribed; and the rules may identify a description of persons by reference to whether the comptroller has given his certificate as to any matter.
- (4) An application for revocation of the patent under section 72(1)(c) above may be made if any of the requirements of the rules cease to be complied with.]

#### Textual Amendments

**F24** S. 125A inserted by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), s. 295, [Sch. 5 para. 30](#)

### 126 Stamp duty.

- (1) An instrument relating to a Community patent or to an application for a European patent shall not be chargeable with stamp duty by reason only of all or any of the provisions of the Community Patent Convention mentioned in subsection (2) below.
- (2) The said provisions are—
  - (a) Article 2.2 (Community patent and application for European patent in which the contracting states are designated to have effect throughout the territories to which the Convention applies);
  - (b) Article 39.1(c) (Community patent treated as national patent of contracting state in which applicant's representative has place of business);
  - (c) Article 39.1(c) as applied by Article 45 to an application for a European patent in which the contracting states are designated.

### 127 Existing patents and applications.

- (1) No application for a patent may be made under the 1949 Act on or after the appointed day.
- (2) Schedule 1 to this Act shall have effect for securing that certain provisions of the 1949 Act shall continue to apply on and after the appointed day to—
  - (a) a patent granted before that day;
  - (b) an application for a patent which is filed before that day, and which is accompanied by a complete specification or in respect of which a complete specification is filed before that day;
  - (c) a patent granted in pursuance of such an application.
- (3) Schedule 2 to this Act shall have effect for securing that (subject to the provisions of that Schedule) certain provisions of this Act shall apply on and after the appointed day to any patent and application to which subsection (2) above relates, but, except



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as provided by the following provisions of this Act, this Act shall not apply to any such patent or application.

- (4) An application for a patent which is made before the appointed day, but which does not comply with subsection (2)(b) above, shall be taken to have been abandoned immediately before that day, but, notwithstanding anything in section 5(3) above, the application may nevertheless serve to establish a priority date in relation to a later application for a patent under this Act if the date of filing the abandoned application falls within the period of fifteen months immediately preceding the filing of the later application.
- (5) Schedule 3 to this Act shall have effect for repealing certain provisions of the 1949 Act.
- (6) The transitional provisions and savings in Schedule 4 to this Act shall have effect.
- (7) In Schedules 1 to 4 to this Act “existing patent” means a patent mentioned in subsection (2)(a) and (c) above, “existing application” means an application mentioned in subsection (2)(b) above, and expressions used in the 1949 Act and those Schedules have the same meanings in those Schedules as in that Act.

**Modifications etc. (not altering text)**

**C10** The text of ss. 127(5), 132(6),(7); **Sch. 1** para. 2(1),(2), 5, 7(1)(2), 8; **Sch. 3**; **Sch. 5** paras 4, 5(1), (2), (3), 6; **Sch. 6** is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

**128 Priorities between patents and applications under 1949 Act and this Act.**

- (1) The following provisions of this section shall have effect for the purpose of resolving questions of priority arising between patents and applications for patents under the 1949 Act and patents and applications for patents under this Act.
- (2) A complete specification under the 1949 Act shall be treated for the purposes of sections 2(3) and 5(2) above—
  - (a) if published under that Act, as a published application for a patent under this Act;
  - (b) if it has a date of filing under that Act, as an application for a patent under this Act which has a date of filing under this Act;
 and in the said section 2(3), as it applies by virtue of this subsection in relation to any such specification, the words “both as filed and” shall be omitted.
- (3) In section 8(1), (2) and (4) of the 1949 Act (search for anticipation by prior claim) the references to any claim of a complete specification, other than the applicant’s, published and filed as mentioned in section 8(1) shall include references to any claim contained in an application made and published under this Act or in the specification of a patent granted under this Act, being a claim in respect of an invention having a priority date earlier than the date of filing the complete specification under the 1949 Act.
- (4) In section 32(1)(a) of the 1949 Act (which specifies, as one of the grounds of revoking a patent, that the invention was claimed in a valid claim of earlier priority date contained in the complete specification of another patent), the reference to such a claim shall include a reference to a claim contained in the specification of a patent granted under this Act (a new claim) which satisfies the following conditions:—

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- (a) the new claim must be in respect of an invention having an earlier priority date than that of the relevant claim of the complete specification of the patent sought to be revoked; and
  - (b) the patent containing the new claim must be wholly valid or be valid in those respects which have a bearing on that relevant claim.
- (5) For the purposes of this section and the provisions of the 1949 Act mentioned in this section the date of filing an application for a patent under that Act and the priority date of a claim of a complete specification under that Act shall be determined in accordance with the provisions of that Act, and the priority date of an invention which is the subject of a patent or application for a patent under this Act shall be determined in accordance with the provisions of this Act.

## 129 Application of Act to Crown.

—This Act does not affect Her Majesty in her private capacity but, subject to that, it binds the Crown.

## 130 Interpretation.

- (1) In this Act, except so far as the context otherwise requires—
- “application for a European patent (UK)” and “international application for a patent (UK)” each mean an application of the relevant description which, on its date of filing, designates the United Kingdom;
  - “appointed day”, in any provision of this Act, means the day appointed under section 132 below for the coming into operation of that provision;
  - “Community Patent Convention” means the Convention for the European Patent for the Common Market and “Community patent” means a patent granted under that convention;
  - “comptroller” means the Comptroller-General of Patents, Designs and Trade Marks;
  - “Convention on International Exhibitions” means the Convention relating to International Exhibitions signed in Paris on 22nd November 1928, as amended or supplemented by any protocol to that convention which is for the time being in force;
  - “court” means
    - [<sup>F25</sup>(a) as respects England and Wales, the High Court or any patents county court having jurisdiction by virtue of an order under section 287 of the Copyright, Designs and Patents Act 1988;]
    - (b) as respects Scotland, the Court of Session;
    - (c) as respects Northern Ireland, the High Court in Northern Ireland;
- “date of filing” means—
- (a) in relation to an application for a patent made under this Act, the date which is the date of filing that application by virtue of section 15 above; and
  - (b) in relation to any other application, the date which, under the law of the country where the application was made or in accordance with the terms of a treaty or convention to which that country is a party, is to be treated as the date of filing that application or is equivalent to the date of filing an application in that country (whatever the outcome of the application);

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“designate” in relation to an application or a patent, means designate the country or countries (in pursuance of the European Patent Convention or the Patent Co-operation Treaty) in which protection is sought for the invention which is the subject of the application or patent;

“employee” means a person who works or (where the employment has ceased) worked under a contract of employment or in employment under or for the purposes of a government department [<sup>F26</sup> or a person who serves (or served) in the naval, military or air forces of the Crown];

“employer”, in relation to an employee, means the person by whom the employee is or was employed;

“European Patent Convention” means the Convention on the Grant of European Patents, “European patent” means a patent granted under that convention, “European patent (UK)” means a European patent designating the United Kingdom, “European Patent Bulletin” means the bulletin of that name published under that convention, and “European Patent Office” means the office of that name established by that convention;

“exclusive licence” means a licence from the proprietor of or applicant for a patent conferring on the licensee, or on him and persons authorised by him, to the exclusion of all other persons (including the proprietor or applicant), any right in respect of the invention to which the patent or application relates, and “exclusive licensee” and “non-exclusive licence” shall be construed accordingly;

“filing fee” means the fee prescribed for the purposes of section 14 above;

“formal requirements” means those requirements designated as such by rules made for the purposes of section 17 above;

“international application for a patent” means an application made under the Patent Co-operation Treaty;

“International Bureau” means the secretariat of the World Intellectual Property Organization established by a convention signed at Stockholm on 14th July 1967;

“international exhibition” means an official or officially recognised international exhibition falling within the terms of the Convention on International Exhibitions or falling within the terms of any subsequent treaty or convention replacing that convention;

“inventor” has the meaning assigned to it by section 7 above;

“journal” has the meaning assigned to it by section 123(6) above;

“mortgage”, when used as a noun, includes a charge for securing money or money’s worth and, when used as a verb, shall be construed accordingly;

“1949 Act” means the <sup>M3</sup>Patents Act 1949;

“patent” means a patent under this Act;

..... <sup>F27</sup>;

“Patent Co-operation Treaty” means the treaty of that name signed at Washington on 19th June 1970;

“patented invention” means an invention for which a patent is granted and “patented process” shall be construed accordingly;

“patented product” means a product which is a patented invention or, in relation to a patented process, a product obtained directly by means of the process or to which the process has been applied;

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“prescribed” and “rules” have the meanings assigned to them by section 123 above;

“priority date” means the date determined as such under section 5 above;

“published” means made available to the public (whether in the United Kingdom or elsewhere) and a document shall be taken to be published under any provision of this Act if it can be inspected as of right at any place in the United Kingdom by members of the public, whether on payment of a fee or not; and “republished” shall be construed accordingly;

“register” and cognate expressions have the meanings assigned to them by section 32 above;

“relevant convention court”, in relation to any proceedings under the European Patent Convention, the Community Patent Convention or the Patent Co-operation Treaty, means that court or other body which under that convention or treaty has jurisdiction over those proceedings, including (where it has such jurisdiction) any department of the European Patent Office;

“right”, in relation to any patent or application, includes an interest in the patent or application and, without prejudice to the foregoing, any reference to a right in a patent includes a reference to a share in the patent;

“search fee” means the fee prescribed for the purposes of [F28 section 17(1) above];

“services of the Crown” and “use for the services of the Crown” have the meanings assigned to them by section 56(2) above, including, as respects any period of emergency within the meaning of section 59 above, the meanings assigned to them by the said section 59.

- (2) Rules may provide for stating in the journal that an exhibition falls within the definition of international exhibition in subsection (1) above and any such statement shall be conclusive evidence that the exhibition falls within that definition.
- (3) For the purposes of this Act matter shall be taken to have been disclosed in any relevant application within the meaning of section 5 above or in the specification of a patent if it was either claimed or disclosed (otherwise than by way of disclaimer or acknowledgment of prior art) in that application or specification.
- (4) References in this Act to an application for a patent, as filed, are references to such an application in the state it was on the date of filing.
- (5) References in this Act to an application for a patent being published are references to its being published under section 16 above.
- (6) References in this Act to any of the following conventions, that is to say—
  - (a) The European Patent Convention;
  - (b) The Community Patent Convention;
  - (c) The Patent Co-operation Treaty;are references to that convention or any other international convention or agreement replacing it, as amended or supplemented by any convention or international agreement (including in either case any protocol or annex), or in accordance with the terms of any such convention or agreement, and include references to any instrument made under any such convention or agreement.
- (7) Whereas by a resolution made on the signature of the Community Patent Convention the governments of the member states of the European Economic Community resolved to adjust their laws relating to patents so as (among other things) to bring those laws

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into conformity with the corresponding provisions of the European Patent Convention, the Community Patent Convention and the Patent Co-operation Treaty, it is hereby declared that the following provisions of this Act, that is to say, sections 1(1) to (4), 2 to 6, 14(3), (5) and (6), 37(5), 54, 60, 69, 72(1) and (2), 74(4), 82, 83, . . . <sup>F29</sup> 100 and 125, are so framed as to have, as nearly as practicable, the same effects in the United Kingdom as the corresponding provisions of the European Patent Convention, the Community Patent Convention and the Patent Co-operation Treaty have in the territories to which those Conventions apply.

- (8) [<sup>F30</sup>Part I of the Arbitration Act 1996] shall not apply to any proceedings before the comptroller under this Act.
- (9) Except so far as the context otherwise requires, any reference in this Act to any enactment shall be construed as a reference to that enactment as amended or extended by or under any other enactment, including this Act.

#### Textual Amendments

- F25** Definition substituted by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), s. 303(1), [Sch. 7 para. 23](#)
- F26** Words added (retrospectively) by [Armed Forces Act 1981 \(c. 55, SIF 7:1\)](#), [s. 22\(1\)\(3\)](#)
- F27** Definition of “patent agent” repealed by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), s. 303(2), [Sch. 8](#)
- F28** Words substituted by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), s. 295, [Sch. 5 para. 5](#)
- F29** Words repealed by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), s. 303(2), [Sch. 8](#)
- F30** Words in s. 130(8) substituted (31.1.1997) by 1996 c. 23, s. 107(1), [Sch. 3 para. 33](#) (with Pt. I); S.I. 1996/3146, [art. 3](#)

#### Marginal Citations

- M3** 1949 c. 87.

### 131 Northern Ireland.

In the application of this Act to Northern Ireland—

- (a) “enactment” includes an enactment of the Parliament of Northern Ireland and a Measure of the Northern Ireland Assembly;
- (b) any reference to a government department includes a reference to a Department of the Government of Northern Ireland;
- (c) any reference to the Crown includes a reference to the Crown in right of Her Majesty’s Government in Northern Ireland;
- (d) any reference to the [<sup>F31</sup>Companies Act 1985] includes a reference to the corresponding enactments in force in Northern Ireland; and
- <sup>F32</sup>(e) .....

#### Textual Amendments

- F31** Words substituted by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\)](#), s. 30, [Sch. 2](#)
- F32** S. 131(e) repealed (31.1.1997) by 1996 c. 23, s. 107(2), [Sch. 4](#) (with Pt. I); S.I. 1996/3146, [art. 3](#)

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VALID FROM 01/07/1999

**[131A** <sup>F33</sup>**Scotland**

In the application of this Act to Scotland—

- (a) “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament;
- (b) any reference to a government department includes a reference to any part of the Scottish Administration; and
- (c) any reference to the Crown includes a reference to the Crown in right of the Scottish Administration.]

**Textual Amendments**

**F33** S. 131A inserted (1.7.1999) by S.I. 1999/1820, arts. 1(2)(3), 4, Sch. 2 Pt. I para. 58 (with saving in art. 5)

**132 Short title, extent, commencement, consequential amendments and repeals.**

- (1) This Act may be cited as the Patents Act 1977.
- (2) This Act shall extend to the Isle of Man, subject to any modifications contained in an Order made by Her Majesty in Council, and accordingly, subject to any such order, references in this Act to the United Kingdom shall be construed as including references to the Isle of Man.
- (3) For the purposes of this Act the territorial waters of the United Kingdom shall be treated as part of the United Kingdom.
- (4) This Act applies to acts done in an area designated by order under section 1(7) of the <sup>M4</sup>Continental Shelf Act 1964, [<sup>F34</sup>or specified by Order under section 22(5) of the Oil and Gas (Enterprise) Act 1982 in connection with any activity falling within section 23(2) of that Act], as it applies to acts done in the United Kingdom.
- (5) This Act (except sections 77(6), (7) and (9), 78(7) and (8), this subsection and the repeal of section 41 of the 1949 Act) shall come into operation on such day as may be appointed by the Secretary of State by order, and different days may be appointed under this subsection for different purposes.
- (6) The consequential amendments in Schedule 5 shall have effect.
- (7) Subject to the provisions of Schedule 4 to this Act, the enactments specified in Schedule 6 to this Act (which include certain enactments which were spent before the passing of this Act) are hereby repealed to the extent specified in column 3 of that Schedule.

**Textual Amendments**

**F34** Words substituted by Oil and Gas (Enterprise) Act 1982 (c. 23, SIF 86), Sch. 3 para. 39

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**Modifications etc. (not altering text)**

- C11** Power of appointment conferred by s. 132(5) partly exercised by [S.I. 1977/2090](#), 1978/586
- C12** The text of ss. 127(5), 132(6),(7); [Sch. 1 para. 2\(1\),\(2\)](#), 5, 7(1)(2), 8; [Sch. 3](#); [Sch. 5 paras 4, 5\(1\), \(2\)](#), (3), 6; [Sch. 6](#) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

**Marginal Citations**

- M4** [1964 c. 29](#).



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