



# Patents Act 1977

## 1977 CHAPTER 37

### PART I

#### NEW DOMESTIC LAW

##### *Patentability*

#### **1 Patentable inventions.**

- (1) A patent may be granted only for an invention in respect of which the following conditions are satisfied, that is to say—
- the invention is new;
  - it involves an inventive step;
  - it is capable of industrial application;
  - the grant of a patent for it is not excluded by subsections (2) and (3) [<sup>F1</sup> or section 4A] below;

and references in this Act to a patentable invention shall be construed accordingly.

- (2) It is hereby declared that the following (among other things) are not inventions for the purposes of this Act, that is to say, anything which consists of—
- a discovery, scientific theory or mathematical method;
  - a literary, dramatic, musical or artistic work or any other aesthetic creation whatsoever;
  - a scheme, rule or method for performing a mental act, playing a game or doing business, or a program for a computer;
  - the presentation of information;

but the foregoing provision shall prevent anything from being treated as an invention for the purposes of this Act only to the extent that a patent or application for a patent relates to that thing as such.

- [<sup>F2</sup>(3) A patent shall not be granted for an invention the commercial exploitation of which would be contrary to public policy or morality.

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- (4) For the purposes of subsection (3) above exploitation shall not be regarded as contrary to public policy or morality only because it is prohibited by any law in force in the United Kingdom or any part of it.]
- (5) The Secretary of State may by order vary the provisions of subsection (2) above for the purpose of maintaining them in conformity with developments in science and technology; and no such order shall be made unless a draft of the order has been laid before, and approved by resolution of, each House of Parliament.

#### Textual Amendments

- F1** Words in s. 1(1)(d) inserted (13.12.2007) by [Patents Act 2004 \(c. 16\)](#), s. 17(1), [Sch. 2 para. 2](#); [S.I. 2007/3396](#), art. 2(1)
- F2** S. 1(3)(4) substituted (28.7.2000) by [S.I. 2000/2037](#), [reg. 3](#)

## 2 Novelty.

- (1) An invention shall be taken to be new if it does not form part of the state of the art.
- (2) The state of the art in the case of an invention shall be taken to comprise all matter (whether a product, a process, information about either, or anything else) which has at any time before the priority date of that invention been made available to the public (whether in the United Kingdom or elsewhere) by written or oral description, by use or in any other way.
- (3) The state of the art in the case of an invention to which an application for a patent or a patent relates shall be taken also to comprise matter contained in an application for another patent which was published on or after the priority date of that invention, if the following conditions are satisfied, that is to say—
- (a) that matter was contained in the application for that other patent both as filed and as published; and
  - (b) the priority date of that matter is earlier than that of the invention.
- (4) For the purposes of this section the disclosure of matter constituting an invention shall be disregarded in the case of a patent or an application for a patent if occurring later than the beginning of the period of six months immediately preceding the date of filing the application for the patent and either—
- (a) the disclosure was due to, or made in consequence of, the matter having been obtained unlawfully or in breach of confidence by any person—
    - (i) from the inventor or from any other person to whom the matter was made available in confidence by the inventor or who obtained it from the inventor because he or the inventor believed that he was entitled to obtain it; or
    - (ii) from any other person to whom the matter was made available in confidence by any person mentioned in sub-paragraph (i) above or in this sub-paragraph or who obtained it from any person so mentioned because he or the person from whom he obtained it believed that he was entitled to obtain it;
  - (b) the disclosure was made in breach of confidence by any person who obtained the matter in confidence from the inventor or from any other person to whom it was made available, or who obtained it, from the inventor; or

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- (c) the disclosure was due to, or made in consequence of the inventor displaying the invention at an international exhibition and the applicant states, on filing the application, that the invention has been so displayed and also, within the prescribed period, files written evidence in support of the statement complying with any prescribed conditions.

- (5) In this section references to the inventor include references to any proprietor of the invention for the time being.

<sup>F3</sup>(6) .....

**Textual Amendments**

**F3** S. 2(6) repealed (13.12.2007) by [Patents Act 2004 \(c. 16\)](#), s. 17(1), Sch. 2 para. 3, [Sch. 3](#); S.I. 2007/3396, art. 2(i)(l)

**3 Inventive step.**

An invention shall be taken to involve an inventive step if it is not obvious to a person skilled in the art, having regard to any matter which forms part of the state of the art by virtue only of section 2(2) above (and disregarding section 2(3) above).

**4 Industrial application.**

- (1) <sup>F4</sup>..., an invention shall be taken to be capable of industrial application if it can be made or used in any kind of industry, including agriculture.

<sup>F5</sup>(2) .....

<sup>F6</sup>(3) .....

**Textual Amendments**

**F4** Words in s. 4(1) repealed (13.12.2007) by [Patents Act 2004 \(c. 16\)](#), s. 17(1), Sch. 2 para. 4(a), [Sch. 3](#); S.I. 2007/3396, art. 2(i)(l)

**F5** S. 4(2) repealed (13.12.2007) by [Patents Act 2004 \(c. 16\)](#), s. 17(1), Sch. 2 para. 4(b), [Sch. 3](#); S.I. 2007/3396, art. 2(i)(l)

**F6** S. 4(3) repealed (13.12.2007) by [Patents Act 2004 \(c. 16\)](#), s. 17(1), Sch. 2 para. 4(b), [Sch. 3](#); S.I. 2007/3396, art. 2(i)(l)

**[<sup>F7</sup>4A Methods of treatment or diagnosis**

- (1) A patent shall not be granted for the invention of—
  - (a) a method of treatment of the human or animal body by surgery or therapy, or
  - (b) a method of diagnosis practised on the human or animal body.
- (2) Subsection (1) above does not apply to an invention consisting of a substance or composition for use in any such method.
- (3) In the case of an invention consisting of a substance or composition for use in any such method, the fact that the substance or composition forms part of the state of the art

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shall not prevent the invention from being taken to be new if the use of the substance or composition in any such method does not form part of the state of the art.

- (4) In the case of an invention consisting of a substance or composition for a specific use in any such method, the fact that the substance or composition forms part of the state of the art shall not prevent the invention from being taken to be new if that specific use does not form part of the state of the art.]

#### Textual Amendments

F7 S. 4A inserted (13.12.2007) by Patents Act 2004 (c. 16), ss. 1, 17(1); S.I. 2007/3396, art. 2(a)

## 5 Priority date.

- (1) For the purposes of this Act the priority date of an invention to which an application for a patent relates and also of any matter (whether or not the same as the invention) contained in any such application is, except as provided by the following provisions of this Act, the date of filing the application.
- (2) If in or in connection with an application for a patent (the application in suit) a declaration is made, whether by the applicant or any predecessor in title of his, complying with the relevant requirements of rules and specifying one or more earlier relevant applications for the purposes of this section made by the applicant or a predecessor in title of his and [<sup>F8</sup>the application in suit has a date of filing during the period allowed under subsection (2A)(a) or (b) below] , then—
- (a) if an invention to which the application in suit relates is supported by matter disclosed in the earlier relevant application or applications, the priority date of that invention shall instead of being the date of filing the application in suit be the date of filing the relevant application in which that matter was disclosed, or, if it was disclosed in more than one relevant application, the earliest of them;
  - (b) the priority date of any matter contained in the application in suit which was also disclosed in the earlier relevant application or applications shall be the date of filing the relevant application in which that matter was disclosed or, if it was disclosed in more than one relevant application, the earliest of them.

[<sup>F9</sup>(2A) The periods are—

- (a) the period of twelve months immediately following the date of filing of the earlier specified relevant application, or if there is more than one, of the earliest of them; and
  - (b) where the comptroller has given permission under subsection (2B) below for a late declaration to be made under subsection (2) above, the period commencing immediately after the end of the period allowed under paragraph (a) above and ending at the end of the prescribed period.
- (2B) The applicant may make a request to the comptroller for permission to make a late declaration under subsection (2) above.
- (2C) The comptroller shall grant a request made under subsection (2B) above if, and only if—
- (a) the request complies with the relevant requirements of rules; and

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- (b) the comptroller is satisfied that the applicant's failure to file the application in suit within the period allowed under subsection (2A)(a) above was unintentional.]
- (3) Where an invention or other matter contained in the application in suit was also disclosed in two earlier relevant applications filed by the same applicant as in the case of the application in suit or a predecessor in title of his and the second of those relevant applications was specified in or in connection with the application in suit, the second of those relevant applications shall, so far as concerns that invention or matter, be disregarded unless—
- (a) it was filed in or in respect of the same country as the first; and
- (b) not later than the date of filing the second, the first (whether or not so specified) was unconditionally withdrawn, or was abandoned or refused, without—
- (i) having been made available to the public (whether in the United Kingdom or elsewhere);
- (ii) leaving any rights outstanding; and
- (iii) having served to establish a priority date in relation to another application, wherever made.
- (4) The foregoing provisions of this section shall apply for determining the priority date of an invention for which a patent has been granted as they apply for determining the priority date of an invention to which an application for that patent relates.
- (5) In this section “relevant application” means any of the following applications which has a date of filing, namely—
- (a) an application for a patent under this Act;
- (b) an application in or for a convention country (specified under section 90 below) for protection in respect of an invention or an application which, in accordance with the law of a convention country or a treaty or international convention to which a convention country is a party, is equivalent to such an application.
- <sup>F10</sup>[(6) References in subsection (5) above to a convention country include references to a country, other than the United Kingdom, which is a member of the World Trade Organisation.]

#### Textual Amendments

- F8** Words in s. 5(2) substituted (1.1.2005) by [The Regulatory Reform \(Patents\) Order 2004 \(S.I. 2004/2357\)](#), arts. 1(2), 3 (with arts. 20-23)
- F9** S. 5(2A)-(2C) inserted (1.1.2005) by [The Regulatory Reform \(Patents\) Order 2004 \(S.I. 2004/2357\)](#), arts. 1(2), 3 (with arts. 20-23)
- F10** S. 5(6) inserted (29.7.1999) by [S.I. 1999/1899](#), [reg. 7](#)

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

- C1** S. 5 extended (24.5.2000) by [S.I. 2000/1114](#), [art. 2](#)

## 6 Disclosure of matter, etc., between earlier and later applications.

- (1) It is hereby declared for the avoidance of doubt that where an application (the application in suit) is made for a patent and a declaration is made in accordance

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with section 5(2) above in or in connection with that application specifying an earlier relevant application, the application in suit and any patent granted in pursuance of it shall not be invalidated by reason only of relevant intervening acts.

(2) In this section—

“relevant application” has the same meaning as in section 5 above; and

“relevant intervening acts” means acts done in relation to matter disclosed in an earlier relevant application between the dates of the earlier relevant application and the application in suit, as for example, filing another application for the invention for which the earlier relevant application was made, making information available to the public about that invention or that matter or working that invention, but disregarding any application, or the disclosure to the public of matter contained in any application, which is itself to be disregarded for the purposes of section 5(3) above.

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