



Patents Act 1977

1977 CHAPTER 37

PART I

NEW DOMESTIC LAW

Revocation of patents

72 Power to revoke patents on application.

- (1) Subject to the following provisions of this Act, the court or the comptroller may ^{F1}... by order revoke a patent for an invention [^{F2}on the application of any person (including the proprietor of the patent)] on (but only on) any of the following grounds, that is to say—
- (a) the invention is not a patentable invention;
 - [^{F3}(b) that the patent was granted to a person who was not entitled to be granted that patent;]
 - (c) the specification of the patent does not disclose the invention clearly enough and completely enough for it to be performed by a person skilled in the art;
 - (d) the matter disclosed in the specification of the patent extends beyond that disclosed in the application for the patent, as filed, or, if the patent was granted on a new application filed under section 8(3), 12 or 37(4) above or as mentioned in [^{F4}section 15(9)] above, in the earlier application, as filed;
 - (e) the protection conferred by the patent has been extended by an amendment which should not have been allowed.
- (2) An application for the revocation of a patent on the ground mentioned in subsection (1) (b) above—
- (a) may only be made by a person found by the court in an action for a declaration or declarator, or found by the court or the comptroller on a reference under section 37 above, to be entitled to be granted that patent or to be granted a patent for part of the matter comprised in the specification of the patent sought to be revoked; and

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- (b) may not be made if that action was commenced or that reference was made after the end of the period of two years beginning with the date of the grant of the patent sought to be revoked, unless it is shown that any person registered as a proprietor of the patent knew at the time of the grant or of the transfer of the patent to him that he was not entitled to the patent.
- (3) ^{F5}
- (4) An order under this section may be an order for the unconditional revocation of the patent or, where the court or the comptroller determines that one of the grounds mentioned in subsection (1) above has been established, but only so as to invalidate the patent to a limited extent, an order that the patent should be revoked unless within a specified time the specification is amended ^{F6}... to the satisfaction of the court or the comptroller, as the case may be.
- [^{F7}(4A) The reference in subsection (4) above to the specification being amended is to its being amended under section 75 below and also, in the case of a European patent (UK), to its being amended under any provision of the European Patent Convention under which the claims of the patent may be limited by amendment at the request of the proprietor.]
- (5) A decision of the comptroller or on appeal from the comptroller shall not estop any party to civil proceedings in which infringement of a patent is in issue from alleging invalidity of the patent on any of the grounds referred to in subsection (1) above, whether or not any of the issues involved were decided in the said decision.
- (6) Where the comptroller refuses to grant an application made to him by any person under this section, no application (otherwise than by way of appeal or by way of putting validity in issue in proceedings for infringement) may be made to the court by that person under this section in relation to the patent concerned, without the leave of the court.
- (7) Where the comptroller has not disposed of an application made to him under this section, the applicant may not apply to the court under this section in respect of the patent concerned unless either—
- (a) the proprietor of the patent agrees that the applicant may so apply, or
 - (b) the comptroller certifies in writing that it appears to him that the question whether the patent should be revoked is one which would more properly be determined by the court.

Textual Amendments

- F1** Words in s. 72(1) repealed (1.10.2005) by [Patents Act 2004 \(c. 16\)](#), s. 17(1), [Sch. 2 para. 18](#), [Sch. 3](#); [S.I. 2005/2471](#), art. 2(f)(g)
- F2** Words in s. 72(1) inserted (1.10.2005) by [Patents Act 2004 \(c. 16\)](#), s. 17(1), [Sch. 2 para. 18](#); [S.I. 2005/2471](#), art. 2(g)
- F3** S. 72(1)(b) substituted by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), s. 295, [Sch. 5 para. 18](#)
- F4** Words in s. 72(1)(d) substituted (1.1.2005) by [The Regulatory Reform \(Patents\) Order 2004 \(S.I. 2004/2357\)](#), arts. 1(2), [12](#) (with arts. 20-23)
- F5** S. 72(3) repealed by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), s. 303(2), [Sch. 8](#)
- F6** Words in s. 72(4) repealed (13.12.2007) by [Patents Act 2004 \(c. 16\)](#), ss. 4, 17(1), [Sch. 3](#); [S.I. 2007/3396](#), art. 2(f)(i)
- F7** S. 72(4A) inserted (13.12.2007) by [Patents Act 2004 \(c. 16\)](#), [ss. 4](#), 17(1); [S.I. 2007/3396](#), art. 2(f)

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73 Comptroller's power to revoke patents on his own initiative.

(1) If it appears to the comptroller that an invention for which a patent has been granted formed part of the state of the art by virtue only of section 2(3) above, he may on his own initiative by order revoke the patent, but shall not do so without giving the proprietor of the patent an opportunity of making any observations and of amending the specification of the patent so as to exclude any matter which formed part of the state of the art as aforesaid without contravening section 76 below.

[^{F8}(2) If it appears to the comptroller that a patent under this Act and a European patent (UK) have been granted for the same invention having the same priority date, and that the applications for the patents were filed by the same applicant or his successor in title, he shall give the proprietor of the patent under this Act an opportunity of making observations and of amending the specification of the patent, and if the proprietor fails to satisfy the comptroller that there are not two patents in respect of the same invention, or to amend the specification so as to prevent there being two patents in respect of the same invention, the comptroller shall revoke the patent.

(3) The comptroller shall not take action under subsection (2) above before—
(a) the end of the period for filing an opposition to the European patent (UK) under the European Patent Convention, or
(b) if later, the date on which opposition proceedings are finally disposed of;
and he shall not then take any action if the decision is not to maintain the European patent or if it is amended so that there are not two patents in respect of the same invention.

(4) The comptroller shall not take action under subsection (2) above if the European patent (UK) has been surrendered under section 29(1) above before the date on which by virtue of section 25(1) above the patent under this Act is to be treated as having been granted or, if proceedings for the surrender of the European patent (UK) have been begun before that date, until those proceedings are finally disposed of; and he shall not then take any action if the decision is to accept the surrender of the European patent.]

Textual Amendments

F8 S. 73(2)(3)(4) substituted for subsections (2) and (3) by [Copyright, Designs and Patents Act 1988](#) (c. 48, SIF 67A), s. 295, [Sch. 5 para. 19](#)

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