



Patents Act 1949

1949 CHAPTER 87

Use of patented inventions for services of the Crown

46 Use of patented inventions for services of the Crown

- (1) Notwithstanding anything in this Act, any Government department, and any person authorised in writing by a Government department, may make, use and exercise any patented invention for the services of the Crown in accordance with the following provisions of this section.
- (2) If and so far as the invention has before the priority date of the relevant claim of the complete specification been duly recorded by or tried by or on behalf of a Government department otherwise than in consequence of the communication thereof directly or indirectly by the patentee or any person from whom he derives title, any use of the invention by virtue of this section may be made free of any royalty or other payment to the patentee.
- (3) If and so far as the invention has not been so recorded or tried as aforesaid, any use of the invention made by virtue of this section at any time after the acceptance of the complete specification in respect of the patent, or in consequence of any such communication as aforesaid, shall be made upon such terms as may be agreed upon, either before or after the use, between the Government department and the patentee with the approval of the Treasury, or as may in default of agreement be determined by the court on a reference under section forty-eight of this Act.
- (4) The authority of a Government department in respect of an invention may be given under this section either before or after the patent is granted and either before or after the acts in respect of which the authority is given are done, and may be given to any person whether or not he is authorised directly or indirectly by the patentee to make, use, exercise or vend the invention.
- (5) Where any use of an invention is made by or with the authority of a Government department under this section, then, unless it appears to the department that it would be contrary to the public interest so to do, the department shall notify the patentee as soon as practicable after the use is begun, and furnish him with such information as to the extent of the use as he may from time to time require.

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- (6) For the purposes of this and the next following section, any use of an invention for the supply to the government of any country outside the United Kingdom, in pursuance of any agreement or arrangement between His Majesty's Government in the United Kingdom and the government of that country, of articles required for the defence of that country shall be deemed to be a use of the invention for the services of the Crown ; and the power of a Government department or a person authorised by a Government department under this, section to make, use and exercise an invention shall include power—
- (a) to sell such articles to the government of any country in pursuance of any such agreement or arrangement as aforesaid ; and
 - (b) to sell to any person any articles made in the exercise of the powers conferred by this section which are no longer required for the purpose for which they were made.
- (7) The purchaser of any articles sold in the exercise of powers conferred by this section, and any person claiming through him, shall have power to deal with them in the same manner as if the patent were held on behalf of His Majesty.

47 Rights of third parties in respect of Crown use

- (1) In relation to any use of a patented invention, or an invention in respect of which an application for a patent is pending, made for the services of the Crown:—
- (a) by a Government department or a person authorised by a Government department under the last foregoing section; or
 - (b) by the patentee or applicant for the patent to the order of a Government department,
- the provisions of any licence, assignment or agreement made, whether before or after the commencement of this Act, between the patentee or applicant for the patent, or any person who derives title from him or from whom he derives title, and any person other than a Government department shall be of no effect so far as those provisions restrict or regulate the use of the invention, or any model, document or information relating thereto, or provide for the making of payments in respect of any such use, or calculated by reference thereto ; and the reproduction or publication of any model or document in connection with the said use shall not be deemed to be an infringement of any copyright subsisting in the model or document.
- (2) Where an exclusive licence granted otherwise than for royalties or other benefits determined by reference to the use of the invention is in force under the patent, then—
- (a) in relation to any use of the invention which, but for the provisions of this and the last foregoing section, would constitute an infringement of the rights of the licensee, subsection (3) of the last foregoing section shall have effect as if for the reference to the patentee there were substituted a reference to the licensee; and
 - (b) in relation to any use of the invention by the licensee by virtue of an authority given under the last foregoing section, that section shall have effect as if the said subsection (3) were omitted.
- (3) Subject to the provisions of the last foregoing subsection, where the patent, or the right to apply for or obtain the patent, has been assigned to the patentee in consideration of royalties or other benefits determined by reference to the use of the invention, then—
- (a) in relation to any use of the invention by virtue of section forty-six of this Act, subsection (3) of that section shall have effect as if the reference to the

patentee included a reference to the assignor, and any sum payable by virtue of that subsection shall be divided between the patentee and the assignor in such proportion as may be agreed upon between them or as may in default of agreement be determined by the court on a reference under the next following section; and

- (b) in relation to any use of the invention made for the services of the Crown by the patentee to the order of a Government department, subsection (3) of section forty-six of this Act shall have effect as if that use were made by virtue of an authority given under that section.
- (4) Where, under subsection (3) of section forty-six of this Act, payments are required to be made by a Government department to a patentee in respect of any use of an invention, any person, being the holder of an exclusive licence under the patent (not being such a licence as is mentioned in subsection (2) of this section) authorising him to make that use of the invention, shall be entitled to recover from the patentee such part (if any) of those payments as may be agreed upon between that person and the patentee, or as may in default of agreement be determined by the court under the next following section to be just having regard to any expenditure incurred by that person—
- (a) in developing the said invention; or
 - (b) in making payments to the patentee, other than royalties or other payments determined by reference to the use of the invention, in consideration of the licence;

and if, at any time before the amount of any such payment has been agreed upon between the Government department and the patentee, that person gives notice in writing of his interest to the department, any agreement as to the amount of that payment shall be of no effect unless it is made with his consent.

48 Reference of disputes as to Crown use

- (1) Any dispute as to the exercise by a Government department or a person authorised by a Government department of the powers conferred by section forty-six of this Act, or as to terms for the use of an invention for the services of the Crown thereunder, or as to the right of any person to receive any part of a payment made in pursuance of subsection (3) of that section, may be referred to the court by either party to the dispute in such manner as may be prescribed by rules of court.
- (2) In any proceedings under this section to which a Government department are a party, the department may—
 - (a) if the patentee is a party to the proceedings, apply for revocation of the patent upon any ground upon which a patent may be revoked under section thirty-two of this Act;
 - (b) in any case, put in issue the validity of the patent without applying for its revocation.
- (3) If in such proceedings as aforesaid any question arises whether an invention has been recorded or tried as mentioned in section forty-six of this Act, and the disclosure of any document recording the invention, or of any evidence of the trial thereof, would in the opinion of the department be prejudicial to the public interest, the disclosure may be made confidentially to counsel for the other party or to an independent expert mutually agreed upon.
- (4) In determining under this section any dispute between a Government department and any person as to terms for the use of an invention for the services of the Crown, the

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court shall have regard to any benefit or compensation which that person or any person from whom he derives title may have received, or may be entitled to receive, directly or indirectly from any Government department in respect of the invention in question.

- (5) In any proceedings under this section the court may at any time order the whole proceedings or any question or issue of fact arising therein to be referred to a special or official referee or an arbitrator on such terms as the court may direct; and references to the court in the foregoing provisions of this section shall be construed accordingly.

49 Special provisions as to Crown use during emergency

- (1) During any period of emergency within the meaning of this section, the powers exercisable in relation to an invention by a Government department, or a person authorised by a Government department under section forty-six of this Act, shall include power to make, use, exercise and vend the invention for any purpose which appears to the department necessary or expedient—

- (a) for the efficient prosecution of any war in which His Majesty may be engaged ;
- (b) for the maintenance of supplies and services essential to the life of the community ;
- (c) for securing a sufficiency of supplies and services essential to the well-being of the community ;
- (d) for promoting the productivity of industry, commerce and agriculture;
- (e) for fostering and directing exports and reducing imports, or imports of any classes, from all or any countries and for redressing the balance of trade;
- (f) generally for ensuring that the whole resources of the community are available for use, and are used, in a manner best calculated to serve the interests of the community; or
- (g) for assisting the relief of suffering and the restoration and distribution of essential supplies and services in any part of His Majesty's dominions or any foreign countries that are in grave distress as the result of war;

and any reference in that section or in section forty-seven or section forty-eight of this Act to the services of the Crown shall be construed as including a reference to the purposes aforesaid.

- (2) In this section the expression "period of emergency" means the period ending with the tenth day of December, nineteen hundred and fifty, or such later date as may be prescribed by Order in Council, and any other period beginning on such date as may be declared by Order in Council to be the commencement, and ending on such date as may be so declared to be the termination, of a period of emergency for the purposes of this section.
- (3) A draft of any Order in Council under this section shall be laid before Parliament; and the draft shall not be submitted to His Majesty except in pursuance of an Address presented by each House of Parliament praying that the Order be made.