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STATUTORY INSTRUMENTS

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**2007 No. 3291**

**The Patents Rules 2007**

**PART 7**

**PROCEEDINGS HEARD BEFORE THE COMPTROLLER**

*Miscellaneous*

**Security for costs or expenses**

**85.**—(1) The conditions prescribed for the purposes of making an order for security for costs under section 107(4) are that the party against whom the order is made—

- (a) is resident outside the United Kingdom, but not resident in—
  - (i) a Brussels Contracting State,
  - (ii) a Lugano Contracting State, or
  - (iii) a Regulation State,as defined in section 1(3) of the Civil Jurisdiction and Judgments Act 1982(1);
- (b) is a company or other body (whether incorporated inside or outside the United Kingdom) and there is reason to believe that it will be unable to pay another party's costs if ordered to do so;
- (c) has changed his address for service with a view to evading the consequences of the litigation;
- (d) has furnished an incorrect address for service; or
- (e) has taken steps in relation to his assets that would make it difficult to enforce an order for costs against him.

(2) In relation to proceedings in Scotland, references in this rule to costs are references to expenses.

**Powers of comptroller to compel attendance of witnesses and production of documents**

**86.** The comptroller shall have the powers of a judge of the High Court (in Scotland, the Court of Session) as regards—

- (a) the attendance of witnesses; and
- (b) the discovery and production of documents,

but he shall have no power to punish summarily for contempt.

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(1) 1982 c. 27; section 1(3) was substituted by SI 1990/2591, and then amended by section 2(5) and (6) of the Civil Jurisdiction and Judgments Act 1991 (c. 12) and by SI 2000/1824 and 2001/3929.

### **Evidence in proceedings before the comptroller**

**87.**—(1) Subject to paragraphs (2) to (5), evidence filed under this Part may be given—

- (a) by witness statement, statement of case, affidavit, statutory declaration; or
- (b) in any other form which would be admissible as evidence in proceedings before the court.

(2) A witness statement or a statement of case may only be given in evidence if it includes a statement of truth.

(3) Evidence is to be by witness statement unless the comptroller directs or any enactment requires otherwise.

(4) A witness statement, affidavit or statutory declaration must comply with the requirements of Part 1 of Schedule 2, unless the comptroller otherwise directs.

(5) For the purposes of this Part a statement of truth must be dated and signed by—

- (a) in the case of a witness statement, the person making the statement; and
- (b) in any other case, the party or his legal representative.

### **Proceedings in Scotland**

**88.**—(1) Where there is more than one party to proceedings, a party to the proceedings may apply to the comptroller to hold proceedings in Scotland.

(2) An application made under paragraph (1) must be granted—

- (a) where all the parties consent to the proceedings being held in Scotland; or
- (b) where the comptroller considers it appropriate.

(3) A refusal of an application made under paragraph (1) is excepted from the right of appeal conferred by section 97.

### **Proceedings started under section 46(3) by a person other than the proprietor**

**89.**—(1) An application by a person other than the proprietor to the comptroller under section 46(3)(a) or (b) must be—

- (a) made on Patents Form 2; and
- (b) accompanied by two copies of the draft of the licence he proposes should be granted.

(2) The comptroller must notify the proprietor of the patent that an application has been made.

(3) The comptroller must send a copy of the draft licence with the notification.

(4) In the notification, the comptroller must specify a period within which the proprietor may file a statement of grounds.

(5) The proprietor must file a statement of grounds in accordance with rule 76(4); otherwise he shall be treated as supporting the applicant's case.

(6) Proceedings shall continue under this Part as if they had been started under rule 76(1) and for those purposes the proprietor shall be “the claimant” and the applicant shall be “the defendant”.

### **Licences following entitlement proceedings**

**90.**—(1) The period prescribed for the purposes of section 11(3) and (3A) shall be two months beginning with—

- (a) where section 11 is applied by section 12(5), the date on which the order under section 12(1) was made; and
- (b) in any other case, the date on which the order under section 8 was made.

(2) The period prescribed for the purposes of section 38(3) shall be two months beginning with the date on which the order mentioned in section 38(2) was made.

**Period prescribed for applications by employee for compensation**

**91.**—(1) The period prescribed for the purposes of section 40(1) and (2) shall be the period beginning with the date of grant of the patent and ending one year after the patent ceased to have effect.

(2) But if an application for restoration is made under section 28 and—

- (a) the application is granted, the period prescribed under paragraph (1) shall continue as if the patent had remained continuously in effect; or
- (b) the application is refused, the period prescribed for the purposes of section 40(1) and (2) shall be—
  - (i) the period prescribed under paragraph (1), or
  - (ii) if it expires later, the period of six months beginning with the date on which the application was refused.