



# Patents and Designs Act 1907

## 1907 CHAPTER 29

### PART I

#### PATENTS

##### *Application for and Grant of Patent*

#### **1 Application**

- (1) An application for a patent may be made by any person who claims to be the true and first inventor of an invention, whether he is a British subject or not, and whether alone or jointly with any other person.
- (2) The application must be made in the prescribed form, and must be left at, or sent by post to, the patent office in the prescribed manner.
- (3) The application must contain a declaration to the effect that the applicant is in possession of an invention, whereof he, or in the case of a joint application one at least of the applicants, claims to be the true and first inventor, and for which he desires to obtain a patent, and must be accompanied by either a provisional or complete specification.
- (4) The declaration required by this section may be either a statutory declaration or not, as may be prescribed.

#### **2 Specifications**

- (1) A provisional specification must describe the nature of the invention.
- (2) A complete specification must particularly describe and ascertain the nature of the invention and the manner in which the same is to be performed.
- (3) In the case of any provisional or complete specification where the comptroller deems it desirable he may require that suitable drawings shall be supplied with the specification,

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or at any time before the acceptance of the same, and such drawings shall be deemed to form part of the said specification.

- (4) A specification, whether provisional or complete, must commence with the title, and in the case of a complete specification must end with a distinct statement of the invention claimed.
- (5) Where the invention in respect of which an application is made is a chemical invention, such typical samples and specimens as may be prescribed shall, if in any particular case the comptroller considers it desirable so to require, be furnished before the acceptance of the complete specification.

### **3 Proceedings upon application**

- (1) The Comptroller General of Patents, Designs, and Trade Marks (herein-after referred to as the comptroller) shall refer every application to an examiner.
- (2) if the examiner reports that the nature of the invention is not fairly described, or that the application, specification, or drawings have not been prepared in the prescribed manner, or that the title does not sufficiently indicate the subject-matter of the invention, the comptroller may refuse to accept the application or require that the application, specification, or drawings be amended before he proceeds with the application ; and in the latter case the application shall, if the comptroller so directs, bear date as from the time when the requirement is complied with.
- (3) Where the comptroller refuses to accept an application or requires an amendment, the applicant may appeal from his decision to the law officer, who shall, if required, hear the applicant and the comptroller, and may make an order determining whether and subject to what conditions (if any) the application shall be accepted.
- (4) The comptroller shall, when an application has been accepted, give notice thereof to the applicant.

### **4 Provisional protection**

Where an application for a patent in respect of an invention has been accepted, the invention may during the period between the date of the application and the date of sealing such patent be used and published without prejudice to the patent to be granted for the invention; and such protection from the consequences of use and publication is in this Act referred to as-provisional protection.

### **5 Time for leaving complete specification**

- (1) If the applicant does not leave a complete specification with his application, he may leave it at any subsequent time within six months from the date of the application.

Provided that, where an application is made for an extension of the time for leaving a complete specification, the comptroller shall, on payment of the prescribed fee, grant an extension of time to the extent applied for but not exceeding one month.

- (2) Unless a complete specification is so left, the application shall be deemed to be abandoned.

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## **6 Comparison of provisional and complete specification**

- (1) Where a complete specification is left after a provisional specification, the comptroller shall refer both specifications to an examiner.
- (2) If the examiner reports that the complete specification has not been prepared in the prescribed manner, the comptroller may refuse to accept the complete specification until it has been amended to his satisfaction.
- (3) If the examiner reports that the invention particularly described in the complete specification is not substantially the same as that which is described in the provisional specification the comptroller may—
  - (a) refuse to accept the complete specification until it has been amended to his satisfaction ; or
  - (b) (with the consent of the applicant) cancel the provisional specification and treat the application as having been made on the date at which the complete specification was left, and the application shall have effect as if made on that date :

Provided that where the complete specification includes an invention not included in the provisional specification, the comptroller may allow the original application to proceed so far as the invention included both in the provisional and in the complete specification is concerned, and treat the claim for the additional invention included in the complete specification as an application for that invention made on the date at which the complete specification was left.

- (4) A refusal of the comptroller to accept a complete specification shall be subject to appeal to the law officer, who shall, if required, hear the applicant and the comptroller and may make an order determining whether and subject to what conditions (if any) the complete specification shall be accepted.
- (5) Unless a complete specification is accepted within twelve months from the date of the application, the application shall (except where an appeal has been lodged) become void.

Provided that, where an application is made for an extension of time for the acceptance of a complete specification, the comptroller shall, on payment of the prescribed fee, grant an extension of time to the extent applied for but not exceeding three months.

## **7 Investigation of previous specifications in United Kingdom on applications for patents**

- (1) Where an application for a patent has been made and a complete specification has been left, the examiner shall, in addition to the other inquiries which he is directed to make by this Act, make a further investigation for the purpose of ascertaining whether the invention claimed has been wholly or in part claimed or described in any specification (other than a provisional specification not followed by a complete specification) published before the date of the application, and left pursuant to any application for a patent made in the United Kingdom within fifty years next before the date of the application.
- (2) If on investigation it appears that the invention has been wholly or in part claimed or described in any such specification, the applicant shall be informed thereof, and the applicant may, within such time as may be prescribed, amend his specification,

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and the amended specification shall be investigated in like manner as the original specification.

- (3) If the comptroller is satisfied that no objection exists to the specification on the ground that the invention claimed thereby has been wholly or in part claimed or described in a previous specification as before mentioned, he shall, in the absence of any other lawful ground of objection, accept the specification.
- (4) If the comptroller is not so satisfied, he shall, after hearing the applicant, and unless the objection is removed by amending the specification to the satisfaction of the comptroller, determine whether a reference to any, and if so what, prior specifications ought to be made in the specification by way of notice to the public.

Provided that the comptroller, if satisfied that the invention claimed has been wholly and specifically claimed in any specification to which the investigation has extended, may, in lieu of requiring references to be made in the applicant's specification as aforesaid, refuse to grant a patent.

- (5) An appeal shall lie from the decision of the comptroller under this section to the law officer.
- (6) The investigations and reports required by this section shall not be held in any way to guarantee the validity of any patent, and no liability shall be incurred by the Board of Trade or any officer thereof by reason of, or in connexion with, any such investigation or report, or any proceeding consequent thereon.

## **8 Investigation of specifications published subsequently to application**

- (1) An investigation under the last preceding section shall extend to specifications published after the date of the application in respect of which the investigation is made, and being specifications which have been deposited pursuant to prior applications; and that section shall, subject to rules under this Act, have effect accordingly.
- (2) Where, on such an extended investigation, it appears that the invention claimed in the specification deposited pursuant to an application is wholly or in part claimed in any published specification deposited pursuant to a prior application, the applicant shall, whether or not his specification has been accepted or a patent granted to him, be afforded such facilities as may be prescribed for amending his specification, and in the event of his failing to do so the comptroller shall, in accordance with such procedure as may be prescribed, determine what reference, if any, to other specifications ought to be made in his specification by way of notice to the public.
- (3) For the purposes of this section an application shall be deemed to be prior to another application if the patent applied for when granted would be of prior date to the patent granted pursuant to that other application.
- (4) This section shall come into operation at such date as the Board of Trade may by order direct, and shall apply only to applications made after that date, and the order shall be laid before both Houses of Parliament.

## **9 Advertisement on acceptance of complete specification**

On the acceptance of the complete specification the comptroller shall advertise the acceptance ; and the application and specifications with the drawings (if any) shall be open to public inspection.

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## **10 Effect of acceptance of complete specification**

After the acceptance of a complete specification and until the date of sealing a patent in respect thereof, or the expiration of the time for sealing, the applicant shall have the like privileges and rights as if a patent for the invention had been sealed on the date of the acceptance of the complete specification. Provided that an applicant shall not be entitled to institute any proceeding for infringement until a patent for the invention has been granted to him.

## **11 Opposition to grant of patent**

(1) Any person may at any time within two months from the date of the advertisement of the acceptance of a complete specification give notice at the Patent Office of opposition to the grant of the patent on any of the following grounds:—

- (a) that the applicant obtained the invention from him, or from a person of whom he is the legal representative ; or
- (b) that the invention has been claimed in any complete specification for a British patent which is or will be of prior date to the patent the grant of which is opposed, other than a specification deposited pursuant to an application made more than fifty years before the date of the application for such last-mentioned patent ; or
- (c) that the nature of the invention or the manner in which . it is to be performed is not sufficiently or fairly described and ascertained in the complete specification ; or
- (d) that the complete specification describes or claims an invention other than that described in the provisional specification, and that such other invention forms the subject of an application made by the opponent in the interval between the leaving of the provisional specification and the leaving of the complete specification,

but on no other ground.

(2) Where such notice is given the comptroller shall give notice of the opposition to the applicant, and shall, on the expiration of those two months, after hearing the applicant and the opponent, if desirous of being heard, decide on the case.

(3) The decision of the comptroller shall be subject to appeal to the law officer, who shall, if required, hear the applicant and the opponent, if the opponent is, in his opinion, a person entitled to be heard in opposition to the grant of the patent, and shall decide the case ; and the law officer may, if he thinks fit, obtain the assistance of an expert, who shall be paid such remuneration as the law officer with the consent of the Treasury may determine.

## **12 Grant and sealing of patent**

(1) If there is no opposition, or, in case of opposition, if the determination is in favour of the grant of a patent, a patent shall, on payment of the prescribed fee, be granted to the applicant, or in the case of a joint application to the applicants jointly, and the comptroller shall cause the patent to be sealed with the seal of the patent office.

(2) A patent shall be sealed as soon as may be, and not after the expiration of fifteen months from the date of application, provided that—

- (a) Where the comptroller has allowed an extension of the time within which a complete specification may be left or accepted, a further extension of four

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months after the said fifteen months shall be allowed for the sealing of the patent:

- (b) Where the sealing is delayed by an appeal to the law officer, or by opposition to the grant of the patent, the patent may be sealed at such time as the law officer may direct:
- (c) Where the patent is granted to the legal representative of an applicant who has died before the expiration of the time which would otherwise be allowed for sealing the patent, the patent may be sealed at any time within twelve months after the date of his death :
- (d) Where in consequence of the neglect or failure of the applicant to pay any fee a patent cannot be sealed within the period allowed by this section, that period may, on payment of the prescribed fee and on compliance with the prescribed conditions, be extended to such an extent as may be prescribed, and this provision shall, in such cases as may be prescribed and subject to the prescribed conditions, apply where the period allowed for the sealing of the patent has expired before the commencement of this Act.

### **13 Date of patent**

Except as otherwise expressly provided by this Act, a patent shall be dated and sealed as of the date of the application : Provided that no proceedings shall be taken in respect of an infringement committed before the publication of the complete specification.

### **14 Effect, extent, and form of patent**

- (1) A patent sealed with the seal of the Patent Office shall have the same effect as if it were sealed with the Great Seal of the United Kingdom, and shall have effect throughout the United Kingdom and the Isle of Man.

Provided that a patentee may assign his patent for any place in or part of the United Kingdom, or Isle of Man, as effectually as if the patent were originally granted to extend to that place or part only.

- (2) Every patent may be in the prescribed form and shall be granted for one invention only, but the specification may contain more than one claim; and it shall not be competent for any person in an action or other proceeding to take any objection to a patent on the ground that it has been granted for more than one invention.

### **15 Fraudulent applications for patents**

- (1) A patent granted to the true and first inventor shall not be invalidated by an application in fraud of him, or by provisional protection obtained thereon, or by any use or publication of the invention subsequent to that fraudulent application during the period of provisional protection.
- (2) Where a patent has been revoked on the ground of fraud, the comptroller may, on the application of the true inventor made in accordance with the provisions of this Act, grant to him a patent in lieu of and bearing the same date as the patent so revoked :

Provided that no action shall be brought for any infringement of the patent so granted committed before the actual date when such patent was granted.

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## **16 Single patent for cognate inventions**

- (1) Where the same applicant has put in two or more provisional specifications for inventions which are cognate or modifications one of the other, and has obtained thereby concurrent provisional protection for the same, and the comptroller is of opinion that the whole of such inventions are such as to constitute a single invention and may properly be included in one patent, he may accept one complete specification in respect of the whole of such applications and grant a single patent thereon.
- (2) Such patent shall bear the date of the earliest of such applications, but, in considering the validity of the same and for the purpose of the provisions of this Act with respect to oppositions to the grant of patents, the court or the comptroller, as the case may be, shall have regard to the respective dates of the provisional specifications relating to the several matters claimed therein.