# Patents Act 1949

**1949 CHAPTER 87 12 13 and 14 Geo 6**

*Application, investigation, opposition, etc.*

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

**C1** Ss. 1—10, 11(1)(2), 12, 13, 15—17 restricted by Patents Act 1977 (c. 37), s. 127, **Sch. 1 para. 1**

## 1 Persons entitled to make application.

(1) An application for a patent for an invention may be made by any of the following persons, that is to say:—

(a) by any person claiming to be the true and first inventor of the invention;

(b) by any person being the assignee of the person claiming to be the true and first inventor in respect of the right to make such an application;

and may be made by that person either alone or jointly with any other person.

(2) Without prejudice to the foregoing provisions of this section, an application for a patent for an invention in respect of which protection has been applied for in a convention country may be made by the person by whom the application for protection was made or by the assignee of that person:

Provided that no application shall be made by virtue of this subsection after the expiration of twelve months from the date of the application for protection in a convention country or, where more than one such application for protection has been made, from the date of the first application.

(3) An application for a patent may be made under subsection (1) or subsection (2) of this section by the personal representative of any deceased person who, immediately before his death, was entitled to make such an application.

(4) An application for a patent made by virtue of subsection (2) of this section is in this Act referred to as a convention application.

## 2 Application.

(1) Every application for a patent shall be made in the prescribed form and shall be filed at the Patent Office in the prescribed manner.

(2) If the application (not being a convention application) is made by virtue of an assignment of the right to apply for a patent for the invention, there shall be furnished with the application or within such period as may be prescribed after the filing of the application a declaration, signed by the person claiming to be the true and first inventor or his personal representative, stating that he assents to the making of the application.

(3) Every application (other than a convention application) shall state that the applicant is in possession of the invention and shall name the person claiming to be the true and first inventor; and where the person so claiming is not the applicant or one of the applicants, the application shall contain a declaration that the applicant believes him to be the true and first inventor.

(4) Every convention application shall specify the date on which and the convention country in which the application for protection, or the first such application, was made, and shall state that no application for protection in respect of the invention had been made in a convention country before that date by the applicant or any person from whom he derives title.

(5) Where applications for protection have been made in one or more convention countries in respect of two or more inventions which are cognate or of which one is a modification of another, a single convention application may, subject to the provisions of section four of this Act, be made in respect of those inventions at any time within twelve months from the date of the earliest of the said applications for protection:
Provided that the fee payable on the making of any such application shall be the same as if separate applications had been made in respect of each of the said inventions; and the requirements of the last foregoing subsection shall in the case of any such application apply separately to the applications for protection in respect of each of the said inventions.

## 3 Complete and provisional specifications.

(1) Every application for a patent (other than a convention application) shall be accompanied by either a complete specification or a provisional specification; and every convention application shall be accompanied by a complete specification.

(2) Where an application for a patent is accompanied by a provisional specification, a complete specification shall be filed within twelve months from the date of filing of the application and if the complete specification is not so filed the application shall be deemed to be abandoned:
Provided that the complete specification may be filed at any time after twelve months but within fifteen months from the date aforesaid if a request to that effect is made to the comptroller and the prescribed fee paid on or before the date on which the specification is filed.

(3) Where two or more applications accompanied by provisional specifications have been filed in respect of inventions which are cognate or of which one is a modification of another, a single complete specification may, subject to the provisions of this and the next following section, be filed in pursuance of those applications, or, if more than one complete specification has been filed, may with the leave of the comptroller be proceeded with in respect of those applications.

(4) Where an application for a patent (not being a convention application) is accompanied by a specification purporting to be a complete specification, the comptroller may, if the applicant so requests at any time before the acceptance of the specification, direct that it shall be treated for the purposes of this Act as a provisional specification, and proceed with the application accordingly.

(5) Where a complete specification has been filed in pursuance of an application for a patent accompanied by a provisional specification or by a specification treated by virtue of a direction under the last foregoing subsection as a provisional specification, the comptroller may, if the applicant so requests at any time before the acceptance of the complete specification, cancel the provisional specification and post-date the application to the date of filing of the complete specification.

**4 Contents of specification.**

(1) Every specification, whether complete or provisional, shall describe the invention, and shall begin with a title indicating the subject to which the invention relates.

(2) Subject to any rules made by the Board of Trade under this Act, drawings may, and shall if the comptroller so requires, be supplied for the purposes of any specification, whether complete or provisional; and any drawings so supplied shall, unless the comptroller otherwise directs, be deemed to form part of the specification, and references in this Act to a specification shall be construed accordingly.

(3) Every complete specification—
- (a) shall particularly describe the invention and the method by which it is to be performed;
- (b) shall disclose the best method of performing the invention which is known to the applicant and for which he is entitled to claim protection; and
- (c) shall end with a claim or claims defining the scope of the invention claimed.

(4) The claim or claims of a complete specification must relate to a single invention, must be clear and succinct, and must be fairly based on the matter disclosed in the specification.

(5) Rules made by the Board of Trade under this Act may require that in such cases as may be prescribed by the rules, a declaration as to the inventorship of the invention, in such form as may be so prescribed, shall be furnished with the complete specification or within such period as may be so prescribed after the filing of that specification.

(6) Subject to the foregoing provisions of this section, a complete specification filed after a provisional specification, or filed with a convention application, may include claims in respect of developments of or additions to the invention which was described in the provisional specification or, as the case may be, the invention in respect of which the application for protection was made in a convention country, being developments or additions in respect of which the applicant would be entitled under the provisions of section one of this Act to make a separate application for a patent.

(7) Where a complete specification claims a new substance, the claim shall be construed as not extending to that substance when found in nature.

## 5 Priority date of claims of complete specification.

(1) Every claim of a complete specification shall have effect from the date prescribed by this section in relation to that claim (in this Act referred to as the priority date); and a patent shall not be invalidated by reason only of the publication or use of the invention, so far as claimed in any claim of the complete specification, on or after the priority date of that claim, or by the grant of another patent upon a specification claiming the same invention in a claim of the same or later priority date.

(2) Where the complete specification is filed in pursuance of a single application accompanied by a provisional specification or by a specification which is treated by virtue of a direction under subsection (4) of section three of this Act as a provisional specification, and the claim is fairly based on the matter disclosed in that specification, the priority date of that claim shall be the date of filing of the application.

(3) Where the complete specification is filed or proceeded with in pursuance of two or more applications accompanied by such specifications as are mentioned in the last foregoing subsection, and the claim is fairly based on the matter disclosed in one of those specifications, the priority date of that claim shall be the date of filing of the application accompanied by that specification.

(4) Where the complete specification is filed in pursuance of a convention application and the claim is fairly based on the matter disclosed in the application for protection in a convention country or, where the convention application is founded upon more than one such application for protection, in one of those applications, the priority date of that claim shall be the date of the relevant application for protection.

(5) Where, under the foregoing provisions of this section, any claim of a complete specification would, but for this provision, have two or more priority dates, the priority date of that claim shall be the earlier or earliest of those dates.

(6) In any case to which subsections (2) to (5) of this section do not apply, the priority date of a claim shall be the date of filing of the complete specification.

## 6 Examination of application.

(1) When the complete specification has been filed in respect of an application for a patent, the application and specification or specifications shall be referred by the comptroller to an examiner.

(2) If the examiner reports that the application or any specification filed in pursuance thereof does not comply with the requirements of this Act or of any rules made by the Board of Trade thereunder, or that there is lawful ground of objection to the grant of a patent in pursuance of the application, the comptroller may either—
   (a) refuse to proceed with the application; or
   (b) require the application or any such specification as aforesaid to be amended before he proceeds with the application.

(3) At any time after an application has been filed under this Act and before acceptance of the complete specification, the comptroller may, at the request of the applicant and upon payment of the prescribed fee, direct that the application shall be post-dated to such date as may be specified in the request:
Provided that—

(a) no application shall be post-dated under this subsection to a date later than six months from the date on which it was actually made or would, but for this subsection, be deemed to have been made; and

(b) a convention application shall not be post-dated under this subsection to a date later than the last date on which, under the foregoing provisions of this Act, the application could have been made; **[**[F1]and—

(c) no application shall, on or after the appointed day, be post-dated under this subsection to a date which is that of the appointed day or which falls after it**]**.

(4) Where an application or specification filed under this Act is amended before acceptance of the complete specification, the comptroller may direct that the application or specification shall be post-dated to the date on which it is amended or, if it has been returned to the applicant, to the date on which it is refiled **[**[F2]; but no application shall on or after the appointed day be post-dated under this subsection to a date which is that of the appointed day or which falls after it**]**.

(5) Rules made by the Board of Trade under this Act may make provision for securing that where, at any time after an application or specification has been filed under this Act and before acceptance of the complete specification, a fresh application or specification is filed in respect of any part of the subject matter of the first-mentioned application or specification, the comptroller may direct that the fresh application or specification shall be ante-dated to a date not earlier than the date of filing of the first-mentioned application or specification **[**[F3]; but a fresh application or specification may not be filed on or after the appointed day in accordance with this subsection and those rules unless the comptroller agrees that he will direct that the application or specification shall be ante-dated to a date which falls before the appointed day**]**.

(6) An appeal shall lie from any decision of the comptroller under subsection (2) or subsection (4) of this section.

**Textual Amendments**

**F1** S. 6(3)proviso (c) inserted by Patents Act 1977 (c. 37), s. 127, **Sch. 1 para. 2(1)**

**F2** Words inserted by Patents Act 1977 (c. 37), s. 127, **Sch. 1 para. 2(1)**

**F3** Words inserted by Patents Act 1977 (c. 37), s. 127, **Sch. 1 para. 2(2)**

## 7 Search for anticipation by previous publication.

(1) Subject to the provisions of the last foregoing section, the examiner to whom an application for a patent is referred under this Act shall make investigation for the purpose of ascertaining whether the invention, so far as claimed in any claim of the complete specification, has been published before the date of filing of the applicant's complete specification in any specification filed in pursuance of an application for a patent made in the United Kingdom and dated within fifty years next before that date.

(2) The examiner shall, in addition, make such investigation as the comptroller may direct for the purpose of ascertaining whether the invention, so far as claimed in any claim of the complete specification, has been published in the United Kingdom before the date of filing of the applicant's complete specification in any other document (not being a document of any class described in subsection (1) of section fifty of this Act).

(3) If it appears to the comptroller that the invention, so far as claimed in any claim of the complete specification, has been published as aforesaid, he may refuse to accept the specification unless the applicant either—

(a) shows to the satisfaction of the comptroller that the priority date of the claim of his complete specification is not later than the date on which the relevant document was published; or

(b) amends his complete specification to the satisfaction of the comptroller.

(4) An appeal shall lie from any decision of the comptroller under this section.

**8 Search for anticipation by prior claim.**

(1) In addition to the investigation required by the last foregoing section, the examiner shall make the investigation for the purpose of ascertaining whether the invention, so far as claimed in any claim of the complete specification, is claimed in any claim of any other complete specification published on or after the date of filing of the applicant's complete specification, being a specification filed—

(a) in pursuance of an application for a patent made in the United Kingdom and dated before that date; or

(b) in pursuance of a convention application founded upon an application for protection made in a convention country before that date.

(2) If it appears to the comptroller that the said invention is claimed in a claim of any such other specification as aforesaid, he may, subject to the provisions of this section, direct that a reference to that other specification shall be inserted by way of notice to the public in the applicant's complete specification unless within such time as may be prescribed either—

(a) the applicant shows to the satisfaction of the comptroller that the priority date of his claim is not later than the priority date of the claim of the said other specification; or

(b) the complete specification is amended to the satisfaction of the comptroller.

(3) If in consequence of the investigation under section seven of this Act or otherwise it appears to the comptroller—

(a) that the invention, so far as claimed in any claim of the applicant's complete specification, has been claimed in any such specification as is mentioned in subsection (1) of that section; and

(b) that the other specification was published on or after the priority date of the applicant's claim,

then unless it has been shown to the satisfaction of the comptroller under that section that the priority date of the applicant's claim is not later than the priority date of the claim of that other specification, the provisions of subsection (2) of this section shall apply as they apply in relation to a specification published on or after the date of filing of the applicant's complete specification.

(4) The powers of the comptroller under this section to direct the insertion of a reference to another specification may be exercised either before or after a patent has been granted for the invention claimed in that other specification, but any direction given before the grant of such a patent shall be of no effect unless and until such a patent is granted.

(5) An appeal shall lie from any direction of the comptroller under this section.

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

**C2** S. 8(1)(2)(4) amended by Patents Act 1977 (c. 37), **s. 128(3)(5)**

## 9 Reference in case of potential infringement.

(1) If, in consequence of the investigations required by the foregoing provisions of this Act or of proceedings under section fourteen or section thirty-three of this Act, it appears to the comptroller that an invention in respect of which application for a patent has been made cannot be performed without substantial risk of infringement of a claim of any other patent, he may direct that a reference to that other patent shall be inserted in the applicant's complete specification by way of notice to the public unless within such time as may be prescribed either—

(a) the applicant shows to the satisfaction of the comptroller that there are reasonable grounds for contesting the validity of the said claim of the other patent; or

(b) the complete specification is amended to the satisfaction of the comptroller.

(2) Where, after a reference to another patent has been inserted in a complete specification in pursuance of a direction under the foregoing subsection,—

(a) that other patent is revoked or otherwise ceases to be in force; or

(b) the specification of that other patent is amended by the deletion of the relevant claim; or

(c) it is found, in proceedings before the court or the comptroller, that the relevant claim of that other patent is invalid or is not infringed by any working of the applicant's invention,

the comptroller may, on the application of the applicant, delete the reference to that other patent.

(3) An appeal shall lie from any decision or direction of the comptroller under this section.

## 10 Refusal of application in certain cases.

(1) If it appears to the comptroller in the case of any application for a patent—

(a) that it is frivolous on the ground that it claims as an invention anything obviously contrary to well-established natural laws; or

(b) that the use of the invention in respect of which the application is made would be contrary to law or morality; or

(c) that it claims as an invention a substance capable of being used as food or medicine which is a mixture of known ingredients possessing only the aggregate of the known properties of the ingredients, or that it claims as an invention a process producing such a substance by mere admixture,

he may refuse the application.

(2) If it appears to the comptroller that any invention in respect of which an application for a patent is made might be used in any manner contrary to law, he may refuse the application unless the specification is amended by the insertion of such disclaimer in respect of that use of the invention, or such other reference to the illegality thereof, as the comptroller thinks fit.

(3) An appeal shall lie from any decision of the comptroller under this section.

## 11 Supplementary provisions as to searches, etc.

(1) The powers of the comptroller under section eight or section nine of this Act may be exercised either before or after the complete specification has been accepted or a patent granted to the applicant, and references in those sections to the applicant shall accordingly be construed as including references to the patentee.

(2) Where a complete specification is amended under the foregoing provisions of this Act before it has been accepted, the amended specification shall be examined and investigated in like manner as the original specification.

(3) . . . . . [F4]

**Textual Amendments**

**F4** S. 11(3) repealed by Patents Act 1977 (c. 37), **Sch. 6**

## 12 Time for putting application in order for acceptance.

(1) An application for a patent shall be void unless within **[**[F5]such period, beginning with the date of filing of the complete specification, as may be prescribed**]**, or within such longer period as may be allowed under the following provisions of this section, the applicant has complied with all requirements imposed on him by or under this Act, whether in connection with the complete specification or otherwise in relation to the application; and where the application or any specification or, in the case of a convention application, any document filed as part of the application, has been returned to the applicant by the comptroller in the course of the proceedings, the applicant shall not be deemed to have complied with the said requirements unless and until he has refiled it.

**[**[F6](1A) The period prescribed for the purposes of the foregoing subsection shall not be shorter than twelve months or longer than four years**]**.

(2) The period allowed by subsection (1) of this section shall be extended to such period, **[**[F7]ending not later than three months after the date on which the period allowed under that subsection (apart from any extension thereof) would otherwise have expired**]**, as may be specified in a notice given by the applicant to the comptroller, if the notice is given and the prescribed fee paid before the expiration of the period so specified.

(3) If at the expiration of the period allowed under the foregoing provisions of this section an appeal to the Appeal Tribunal is pending under any of the provisions of this Act in respect of the application (or, in the case of an application for a patent of addition, either in respect of that application or in respect of the application for the patent for the main invention) or the time within which such an appeal could be brought in accordance with the rules of that Tribunal (apart from any future extension of time thereunder) has not expired, then—

(a) where such an appeal is pending, or is brought within the time aforesaid or before the expiration of any extension of that time granted (in the case of a first extension) on an application made within that time or (in the case of a subsequent extension) on an application made before the expiration of the last previous extension, the said period shall be extended until such date as the Appeal Tribunal may determine;

(b) where no such appeal is pending or is so brought, the said period shall continue until the end of the time aforesaid, or, if any extension of that time is granted as aforesaid, until the expiration of the extension or last extension so granted.

**Textual Amendments**

**F5** Words substituted retrospectively by Patents Act 1957 (c. 13), **ss. 1(1)(a)**, 2(2)

**F6** S. 12(1A) inserted retrospectively by Patents Act 1957 (c. 13), **ss. 1(1)(b)**, 2(2)

**F7** Words substituted retrospectively by Patents Act 1957 (c. 13), **ss. 1(1)(c)**, 2(2)

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

**C3** S. 12(3) extended by Patents Act 1957 (c. 13), **s. 2(5)**

**C4** References to Appeal Tribunal to be construed as including references to Patents Court: Patents Act 1977 (c. 37), **Sch. 4 para. 11**

## 13 Acceptance and publication of complete specification.

(1) Subject to the provisions of the last foregoing section, the complete specification filed in pursuance of an application for a patent may be accepted by the comptroller at any time after the applicant has complied with the requirements mentioned in subsection (1) of that section, and if not so accepted within the period allowed under that section for compliance with those requirements, shall be accepted as soon as may be thereafter:
Provided that the applicant may give notice to the comptroller requesting him to postpone acceptance until such date, not being later than fifteen months from the date of filing of the complete specification, as may be specified in the notice; and if such notice is given and, where the notice requests a postponement to a date later than twelve months from the date aforesaid, the prescribed fee is paid, the comptroller may postpone acceptance accordingly.

(2) On the acceptance of a complete specification the comptroller shall give notice to the applicant, and **[**[F8], unless the application is withdrawn,**]** shall advertise in the Journal the fact that the specification has been accepted and the date on which the application and the specification or specifications filed in pursuance thereof will be open to public inspection.

(3) Any reference in this Act to the date of the publication of a complete specification shall be construed as a reference to the date advertised as aforesaid.

(4) After the date of the publication of a complete specification and until the sealing of a patent in respect thereof, the applicant shall have the like privileges and rights as if a patent for the invention had been sealed on the date of the publication of the complete specification:
Provided that an applicant shall not be entitled to institute any proceedings for infringement until the patent has been sealed.

**Textual Amendments**

**F8** Words inserted by Copyright, Designs and Patents Act 1988 (c. 48, SIF 67A), s. 295, **Sch. 5 para. 1**

## 14 . . . . . [F9]

**Textual Amendments**

**F9** S. 14 repealed with saving by Patents Act 1977 (c. 37), Sch. 4 para. 4, **Sch. 6**

## 15 Refusal of patent without opposition.

(1) If at any time after the acceptance of the complete specification filed in pursuance of an application for a patent and before the grant of a patent thereon it comes to the notice of the comptroller, otherwise than in consequence of proceedings in opposition to the grant under the last foregoing section, that the invention, so far as claimed in any claim of the complete specification, has been published in the United Kingdom before the priority date of the claim—

(a) in any specification filed in pursuance of an application for a patent made in the United Kingdom and dated within fifty years next before the date of filing of the applicant's complete specification; or

(b) in any other document (not being a document of any class described in subsection (1) of section fifty of this Act),

the comptroller may refuse to grant the patent unless within such time as may be prescribed the complete specification is amended to his satisfaction.

(2) An appeal shall lie from any decision of the comptroller under this section.

## 16 Mention of inventor as such in patent.

(1) If the comptroller is satisfied, upon a request or claim made in accordance with the provisions of this section—

(a) that the person in respect of or by whom the request or claim is made is the inventor of an invention in respect of which application for a patent has been made, or of a substantial part of that invention; and

(b) that the application for the patent is a direct consequence of his being the inventor,

the comptroller shall, subject to the provisions of this section, cause him to be mentioned as inventor in any patent granted in pursuance of the application, in the complete specification, and in the register of patents:
Provided that the mention of any person as inventor under this section shall not confer or derogate from any rights under the patent.

(2) For the purposes of this section the actual deviser of an invention or a part of an invention shall be deemed to be the inventor, notwithstanding that any other person is for any of the other purposes of this Act treated as the true and first inventor; and no person shall be deemed to be the inventor of an invention or a part of an invention by reason only that it was imported by him into the United Kingdom.

(3) A request that any person shall be mentioned as aforesaid may be made in the prescribed manner by the applicant for the patent or (where the person alleged to be the inventor is not the applicant or one of the applicants) by the applicant and that person.

(4) If any person (other than a person in respect of whom a request in relation to the application in question has been made under the last foregoing subsection) desires to be mentioned as aforesaid, he may make a claim in the prescribed manner in that behalf.

(5) A request or claim under the foregoing provisions of this section must be made not later than two months after the date of the publication of the complete specification, or within such further period (not exceeding one month) as the comptroller may, on an application made to him in that behalf before the expiration of the said period of two months and subject to payment of the prescribed fee, allow.

(6) . . . . . F10

(7) Subject to the provisions of the last foregoing subsection, where a claim is made under subsection (4) of this section, the comptroller shall give notice of the claim to every applicant for the patent (not being the claimant) and to any other person whom the comptroller may consider to be interested; and before deciding upon any request or claim made under subsection (3) or subsection (4) of this section, the comptroller shall, if required, hear the person in respect of or by whom the request or claim is made, and, in the case of a claim under the said subsection (4), any person to whom notice of the claim has been given as aforesaid.

(8) Where any person has been mentioned as inventor in pursuance of this section, any other person who alleges that he ought not to have been so mentioned may at any time apply to the comptroller for a certificate to that effect, and the comptroller may, after hearing, if required, any person whom he may consider to be interested, issue such a certificate, and if he does so, he shall rectify the specification and the register accordingly.

(9) An appeal shall lie from any decision of the comptroller under this section.

**Textual Amendments**

**F10** S. 16(6) repealed by Patents Act 1977 (c. 37), **Sch. 6**

## 17 Substitution of applicants, etc.

(1) If the comptroller is satisfied, on a claim made in the prescribed manner at any time before a patent has been granted, that by virtue of any assignment or agreement made by the applicant or one of the applicants for the patent, or by operation of law, the claimant would, if the patent were then granted, be entitled thereto or to the interest of the applicant therein, or to an undivided share of the patent or of that interest, the comptroller may, subject to the provisions of this section, direct that the application shall proceed in the name of the claimant or in the names of the claimant and the applicant or the other joint applicant or applicants, according as the case may require.

(2) No such direction as aforesaid shall be given by virtue of any assignment or agreement made by one of two or more joint applicants for a patent except with the consent of the other joint applicant or applicants.

(3) No such direction as aforesaid shall be given by virtue of any assignment or agreement for the assignment of the benefit of an invention unless either—

(a) the invention is identified therein by reference to the number of the application for the patent; or

(b) there is produced to the comptroller an acknowledgment by the person by whom the assignment or agreement was made that the assignment or agreement relates to the invention in respect of which that application is made; or

(c) the rights of the claimant in respect of the invention have been finally established by a decision of any court or by a determination of the comptroller or the Appeal Tribunal under the following provisions of this Act.

(4) Where one of two or more joint applicants for a patent dies at any time before the patent has been granted, the comptroller may, upon a request in that behalf made by the survivor or survivors, and with the consent of the personal representative of the deceased, direct that the application shall proceed in the name of the survivor or survivors alone.

(5) If any dispute arises between joint applicants for a patent whether or in what manner the application should be proceeded with, the comptroller may, upon application made to him in the prescribed manner by any of the parties, and after giving to all parties concerned an opportunity to be heard, give such directions as he thinks fit for enabling the application to proceed in the name of one or more of the parties alone or for regulating the manner in which it shall be proceeded with, or for both those purposes, according as the case may require.

(6) An appeal shall lie from any decision of the comptroller under this section.

**18** . . . . . [F11]

**Textual Amendments**

**F11** S. 18 repealed with saving by Patents Act 1977 (c. 37), Sch. 4 para. 5, **Sch. 6**

**Changes to legislation:**
There are currently no known outstanding effects for the Patents Act 1949, Cross Heading: Application, investigation, opposition, etc..