



Patents Act 1977

1977 CHAPTER 37

PART I

NEW DOMESTIC LAW

Patentability

5 Priority date.

- (1) For the purposes of this Act the priority date of an invention to which an application for a patent relates and also of any matter (whether or not the same as the invention) contained in any such application is, except as provided by the following provisions of this Act, the date of filing the application.
- (2) If in or in connection with an application for a patent (the application in suit) a declaration is made, whether by the applicant or any predecessor in title of his, complying with the relevant requirements of rules and specifying one or more earlier relevant applications for the purposes of this section made by the applicant or a predecessor in title of his and [^{F1}the application in suit has a date of filing during the period allowed under subsection (2A)(a) or (b) below], then—
 - (a) if an invention to which the application in suit relates is supported by matter disclosed in the earlier relevant application or applications, the priority date of that invention shall instead of being the date of filing the application in suit be the date of filing the relevant application in which that matter was disclosed, or, if it was disclosed in more than one relevant application, the earliest of them;
 - (b) the priority date of any matter contained in the application in suit which was also disclosed in the earlier relevant application or applications shall be the date of filing the relevant application in which that matter was disclosed or, if it was disclosed in more than one relevant application, the earliest of them.

[^{F2}(2A) The periods are—

Changes to legislation: Patents Act 1977, Section 5 is up to date with all changes known to be in force on or before 08 February 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (a) the period of twelve months immediately following the date of filing of the earlier specified relevant application, or if there is more than one, of the earliest of them; and
 - (b) where the comptroller has given permission under subsection (2B) below for a late declaration to be made under subsection (2) above, the period commencing immediately after the end of the period allowed under paragraph (a) above and ending at the end of the prescribed period.
- (2B) The applicant may make a request to the comptroller for permission to make a late declaration under subsection (2) above.
- (2C) The comptroller shall grant a request made under subsection (2B) above if, and only if—
- (a) the request complies with the relevant requirements of rules; and
 - (b) the comptroller is satisfied that the applicant’s failure to file the application in suit within the period allowed under subsection (2A)(a) above was unintentional.]
- (3) Where an invention or other matter contained in the application in suit was also disclosed in two earlier relevant applications filed by the same applicant as in the case of the application in suit or a predecessor in title of his and the second of those relevant applications was specified in or in connection with the application in suit, the second of those relevant applications shall, so far as concerns that invention or matter, be disregarded unless—
- (a) it was filed in or in respect of the same country as the first; and
 - (b) not later than the date of filing the second, the first (whether or not so specified) was unconditionally withdrawn, or was abandoned or refused, without—
 - (i) having been made available to the public (whether in the United Kingdom or elsewhere);
 - (ii) leaving any rights outstanding; and
 - (iii) having served to establish a priority date in relation to another application, wherever made.
- (4) The foregoing provisions of this section shall apply for determining the priority date of an invention for which a patent has been granted as they apply for determining the priority date of an invention to which an application for that patent relates.
- (5) In this section “relevant application” means any of the following applications which has a date of filing, namely—
- (a) an application for a patent under this Act;
 - [^{F3}(aa) an application in or for a country (other than the United Kingdom) which is a member of the World Trade Organisation for protection in respect of an invention which, in accordance with the law of that country or a treaty or international obligation to which it is a party, is equivalent to an application for a patent under this Act;]
 - (b) an application in or for a convention country (specified under section 90 below) for protection in respect of an invention or an application which, in accordance with the law of a convention country or a treaty or international convention to which a convention country is a party, is equivalent to [^{F4}an application for a patent under this Act].

^{F5}(6)

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Textual Amendments

- F1** Words in s. 5(2) substituted (1.1.2005) by [The Regulatory Reform \(Patents\) Order 2004 \(S.I. 2004/2357\)](#), arts. 1(2), **3** (with arts. 20-23)
- F2** S. 5(2A)-(2C) inserted (1.1.2005) by [The Regulatory Reform \(Patents\) Order 2004 \(S.I. 2004/2357\)](#), arts. 1(2), **3** (with arts. 20-23)
- F3** S. 5(5)(aa) inserted (1.10.2014) by [Intellectual Property Act 2014 \(c. 18\)](#), s. 24(1), **Sch. para. 1(1)**; [S.I. 2014/2330](#), art. 3, Sch.
- F4** Words in s. 5(5)(b) substituted (1.10.2014) by [Intellectual Property Act 2014 \(c. 18\)](#), s. 24(1), **Sch. para. 1(2)**; [S.I. 2014/2330](#), art. 3, Sch.
- F5** S. 5(6) omitted (1.10.2014) by virtue of [Intellectual Property Act 2014 \(c. 18\)](#), s. 24(1), **Sch. para. 1(3)**; [S.I. 2014/2330](#), art. 3, Sch.
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Modifications etc. (not altering text)

- C1** S. 5 extended (24.5.2000) by [S.I. 2000/1114](#), art. 2

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 56(4)(a)(iiia) and word added by [S.I. 2006/1056 Sch. para. 2\(b\)](#) (This amendment comes into force on the day on which 2005 asp 13, s. 20 comes into force, see art. 1(2)(b))
- s. 63(3)(a) words in s. 63(3) renumbered as s. 63(3)(a) by [2004 c. 16 s. 2\(4\)](#) (Amendment not applied to legislation.gov.uk. S. 2(4) was repealed (29.4.2006) by S.I. 2006/1028, art. 2(4), Sch. 4)
- s. 63(3)(b) and word inserted by [2004 c. 16 s. 2\(4\)](#) (Amendment not applied to legislation.gov.uk. S. 2(4) was repealed (29.4.2006) by S.I. 2006/1028, art. 2(4), Sch. 4)