



Patents Act 2004

2004 CHAPTER 16

Other amendments of the 1977 Act

10 Compensation of employees for certain inventions

- (1) In section 40 of the 1977 Act (compensation of employees for certain inventions), for subsection (1) there is substituted—

“(1) Where it appears to the court or the comptroller on an application made by an employee within the prescribed period that—

- (a) the employee has made an invention belonging to the employer for which a patent has been granted,
- (b) having regard among other things to the size and nature of the employer’s undertaking, the invention or the patent for it (or the combination of both) is of outstanding benefit to the employer, and
- (c) by reason of those facts it is just that the employee should be awarded compensation to be paid by the employer,

the court or the comptroller may award him such compensation of an amount determined under section 41 below.”

- (2) In subsection (2)(c) of that section, for “the patent” there is substituted “ the invention or the patent for it (or both) ”.

- (3) In section 41 of that Act (amount of compensation), for subsection (1) there is substituted—

“(1) An award of compensation to an employee under section 40(1) or (2) above shall be such as will secure for the employee a fair share (having regard to all the circumstances) of the benefit which the employer has derived, or may reasonably be expected to derive, from any of the following—

- (a) the invention in question;
- (b) the patent for the invention;
- (c) the assignment, assignation or grant of—
 - (i) the property or any right in the invention, or

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- (ii) the property in, or any right in or under, an application for the patent,
to a person connected with the employer.”
- (4) In subsections (4) and (5) of that section, the words “a patent for” are omitted.
- (5) In subsection (5)(a) of that section, after “the patent” there is inserted “ for it ”.
- (6) In section 43 of that Act (provisions supplementing sections 39 to 42), in subsection (5)
—
(a) for “a patent” there is substituted “ an invention or patent ”;
(b) for “the patent”, in both places, there is substituted “ it ”.
- (7) After subsection (5) of that section there is inserted—
“(5A) For the purposes of sections 40 and 41 above the benefit derived or expected to be derived by an employer from an invention shall not include any benefit derived or expected to be derived from the invention after the patent for it has expired or has been surrendered or revoked.”
- (8) This section, and the entry in Schedule 3 corresponding to subsection (4), apply in relation to an invention the patent for which is applied for on or after the commencement of this section.

In this subsection “patent” has the meaning given by section 43(4) of the 1977 Act.

Commencement Information

II [S. 10](#) in force at 1.1.2005 by [S.I. 2004/3205](#), **art. 2(d)** (with [art. 9](#))

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