



# Patents Act 1949

1949 CHAPTER 87 12 13 and 14 Geo 6

An Act to consolidate certain enactments relating to patents. [16th December 1949]

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

- C1 Act restricted (*retrospectively*) by 1994 c. 26, s. 106(1), **Sch. 4 para. 2(4)**; S.I. 1994/2550, **art. 2**
- C2 Act extended (8.2.1997) by S.I. 1996/3120, **reg. 5**
- C3 Act extended (2. 1. 1993) by S.I. 1992/3091, **regs. 1(1),5**
- C4 Functions of Board of Trade and of President of Board of Trade now exercisable concurrently by Secretary of State: S.I. 1970/1537, **art. 2(1)**
- C5 Act excluded by **British Telecommunications Act 1981 (c. 38, SIF 96), s. 88 Sch. 5 para. 3(3)**

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**Commencement Information**

- I1 Act not in force at Royal Assent see s. 107(2); Act wholly in force at 1st January 1950.

*Application, investigation, opposition, etc.*

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

- C6 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

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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.

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- (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

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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.

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- (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; [<sup>F1</sup>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 [<sup>F2</sup>; 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 [<sup>F3</sup>; 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\(2\)](#)

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## **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

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(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)**

C7 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

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- (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 [F5such 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, [F7ending 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



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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)

- C8** [S. 12\(3\)](#) extended by [Patents Act 1957 \(c. 13\)](#), **s. 2(5)**
- C9** 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 [<sup>F8</sup>, 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.

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- (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,

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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) ..... <sup>F10</sup>
- (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](#)

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## 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](#)

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*Status: Point in time view as at 16/12/1996.*  
*Changes to legislation: There are currently no known outstanding effects for the Patents Act 1949. (See end of Document for details)*

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### *Grant, effect and term of patent*

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

**C10** S. 19—21, 22(1)—(3), 23—26 restricted by [Patents Act 1977 \(c. 37\)](#), s. 127, [Sch. 1 para. 1](#)

## **19 Grant and sealing of patent.**

- (1) Subject to the provisions of this Act with respect to opposition, and to any other power of the comptroller to refuse the grant, a patent sealed with the seal of the Patent Office shall, if the prescribed request is made within the time allowed under this section, be granted to the applicant or applicants within that time or as soon as may be thereafter; and the date on which the patent is sealed shall be entered in the register of patents.
- (2) Subject to the following provisions of this Act with respect to patents of addition, a request under this section for the sealing of a patent shall be made not later than the expiration of four months from the date of the publication of the complete specification:  
Provided that—
  - (a) where at the expiration of the said four months any proceeding in relation to the application for the patent is pending in any court or before the comptroller or the Appeal Tribunal, the request may be made within the prescribed period after the final determination of that proceeding;
  - (b) where the applicant or one of the applicants has died before the expiration of the time within which under the provisions of this subsection the request could otherwise be made, the said request may be made at any time within twelve months after the date of the death or at such later time as the comptroller may allow.
- (3) The period within which under the last foregoing subsection a request for the sealing of a patent may be made may from time to time be extended by the comptroller to such longer period as may be specified in an application made to him in that behalf, if the application is made and the prescribed fee paid within that longer period:  
Provided that the first-mentioned period shall not be extended under this subsection by more than six months or such shorter period as may be prescribed.
- (4) Where in any case the longest period for making a request for the sealing of a patent allowable in that case by or under the foregoing provisions of this section has been allowed, and it is proved to the satisfaction of the comptroller that hardship would arise in connection with the prosecution by an applicant of an application for a patent in any country outside the United Kingdom unless that period is extended, that period may be extended from time to time to such longer period as appears to the comptroller to be necessary in order to prevent that hardship arising if an application in that behalf is made to him, and the prescribed fee is paid, within the first-mentioned period, or in the case of a second or subsequent application under this subsection, within the period to which that period was extended on the last preceding application thereunder.
- (5) For the purposes of this section a proceeding shall be deemed to be pending so long as the time for any appeal therein (apart from any future extension of that time) has not expired, and a proceeding shall be deemed to be finally determined when the time for any appeal therein (apart from any such extension) has expired without the appeal being brought.

*Status: Point in time view as at 16/12/1996.*

*Changes to legislation: There are currently no known outstanding effects for the Patents Act 1949. (See end of Document for details)*

## 20 Amendment of patent granted to deceased applicant.

Where, at any time after a patent has been sealed in pursuance of an application under this Act, the comptroller is satisfied that the person to whom the patent was granted had died, or (in the case of a body corporate) had ceased to exist, before the patent was sealed, he may amend the patent by substituting for the name of that person the name of the person to whom the patent ought to have been granted; and the patent shall have effect, and shall be deemed always to have had effect, accordingly.

## 21 Extent, effect 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 patent may be assigned for any place in or part of the United Kingdom or Isle of Man as effectually as if it were granted so as to extend to that place or part only.
- (2) Subject to the provisions of this Act and of subsection (3) of section three of the <sup>M1</sup>Crown Proceedings Act 1947, a patent shall have the same effect against the Crown as it has against a subject.
- (3) A patent shall be in such form as may be authorised by rules made by the Board of Trade under this Act.
- (4) A patent shall be granted for one invention only; but 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.

### Marginal Citations

M1 1947 c. 44

## 22 Date and term of patent.

- (1) Every patent shall be dated with the date of filing of the complete specification:  
Provided that no proceeding shall be taken in respect of an infringement committed before the date of the publication of the complete specification.
- (2) The date of every patent shall be entered in the register of patents.
- (3) Except as otherwise expressly provided by this Act, the term of every patent shall be sixteen years from the date of the patent.
- (4) .....<sup>F12</sup>

### Textual Amendments

F12 S. 22(4)(5), 27 repealed by Patents Act 1977 (c. 37), Sch. 6

### Modifications etc. (not altering text)

C11 S. 22(3) modified by Patents Act 1977 (c. 37), s. 127, Sch. 1 para. 4

*Status: Point in time view as at 16/12/1996.*

*Changes to legislation: There are currently no known outstanding effects for the Patents Act 1949. (See end of Document for details)*

## 23 Extension on ground of inadequate remuneration.

- (1) If upon application made by a patentee in accordance with this section the court is satisfied that the patentee has not been adequately remunerated by the patent, the court may by order extend the term of the patent, subject to such restrictions, conditions and provisions, if any, as may be specified in the order, for such period . . . <sup>F13</sup> as may be so specified; and any such order may be made notwithstanding that the term of the patent has previously expired.
- (2) An application for an order under this section shall be made by petition after such advertisement as may be [<sup>F14</sup>prescribed by rules of court][<sup>F14</sup>prescribed by rules made under section seven of the <sup>M2</sup>Northern Ireland Act 1962], and shall be made not more than twelve nor less than six months before the expiration of the term of the patent or at such later time (not being later than the expiration of the said term) as the court may allow.
- (3) Any person desiring to oppose the making of an order under this section, or to claim the inclusion therein of any restrictions, conditions or provisions, may within such period as may be prescribed by rules of court give notice of opposition to the court.
- (4) On the hearing of any application under this section the applicant and any person by whom notice of opposition has been duly given shall be made parties to the proceeding; and the comptroller shall be entitled to appear and be heard, and shall appear if so directed by the court.
- (5) In considering any application under this section the court shall have regard to the nature and merits of the invention in relation to the public, to the profits made by the patentee as such, and to all the circumstances of the case.
- (6) Not more than one order shall be made under this section in respect of the same patent, but an order may be made under this section in respect of a patent in respect of which one or more orders have been made under the next following section.

### Textual Amendments

**F13** Words repealed with saving by [Patents Act 1977 \(c. 37\)](#), [Sch. 4 para. 18\(1\)](#), [Sch. 6](#)

**F14** Words “prescribed” to “1962” substituted (N.I.) for words “prescribed” to “court” by [Northern Ireland Act 1962 \(c. 30\)](#), [Sch. 1 Pt. I](#)

### Modifications etc. (not altering text)

**C12** [S. 23](#) restricted by [Patents Act 1977 \(c. 37\)](#), [Sch. 1 para. 3\(2\)](#); amended by *ibid.*, para. 3(3)

### Marginal Citations

**M2** [1962 c. 30](#).

## 24 Extension on ground of war loss.

- (1) If upon application made by a patentee in accordance with this section the court or the comptroller is satisfied that the patentee as such has suffered loss or damage (including loss of opportunity of dealing in or developing the invention) by reason of hostilities between His Majesty and any foreign state, the court or comptroller may by order extend the term of the patent subject to such restrictions, conditions and provisions, if any, as may be specified in the order, for such period . . . <sup>F15</sup> as may be so specified; and



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any such order may be made notwithstanding that the term of the patent has previously expired.

- (2) An application for an order under this section may be made at the option of the applicant to the court or to the comptroller: but if the comptroller considers that an application made to him raises issues of a kind which would be more fittingly decided by the court, he may if he thinks fit refer the application for decision by the court.
- (3) An application under this section shall be made not more than twelve nor less than six months before the expiration of the term of the patent or at such later time as the court or comptroller may allow:  
Provided that the court or comptroller shall not allow an application to be made later than the expiration of the said term unless satisfied that the applicant has been prevented from making the application before the expiration of that term by being on active service or by other circumstances arising by reason of any such hostilities as aforesaid.
- (4) Where an application under this section is made to the court, it may be made by petition or by originating summons after such advertisement as may be [<sup>F16</sup>prescribed by rules of court][<sup>F16</sup>prescribed by rules made under section seven of the <sup>M3</sup>Northern Ireland Act 1962]; and where an application under this section is made to the comptroller, it shall be made in such manner as may be prescribed by rules made by the Board of Trade under this Act.
- (5) Any person desiring to oppose the making of an order under this section, or to claim the inclusion therein of any restrictions, conditions or provisions, may give notice of opposition to the court or, as the case may be, the comptroller—
  - (a) in the case of an application to the court, within such period as may be [<sup>F16</sup>prescribed by rules of court][<sup>F16</sup>prescribed by rules made under section seven of the <sup>M4</sup>Northern Ireland Act 1962]; and
  - (b) in the case of an application to the comptroller, within such period as may be prescribed by rules made by the Board of Trade under this Act.
- (6) On the hearing of any application under this section the applicant and any person by whom notice of opposition has been duly given shall be made parties to the proceeding; and in the case of an application to the court, the comptroller shall be entitled to appear and be heard, and shall appear if so directed by the court.
- (7) Two or more orders may be made under this section in respect of the same patent, and an order may be made under this section in respect of a patent in respect of which an order has been made under the last foregoing section: . . . <sup>F15</sup>
- (8) No order shall be made under this section on the application of—
  - (a) a person who is a subject of such a foreign state as is mentioned in subsection (1) of this section; or
  - (b) a company the business of which is managed or controlled by such persons or is carried on wholly or mainly for the benefit of or on behalf of such persons, notwithstanding that the company may be registered within His Majesty's dominions;

and for the purpose of this section no account shall be taken of any loss or damage suffered by any person during any period during which he was such a subject as aforesaid, or by any company during any period during which its business was managed or controlled or carried on as aforesaid.
- (9) An appeal shall lie from any decision of the comptroller under this section.



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#### Textual Amendments

- F15** Words repealed with saving by [Patents Act 1977 \(c. 37\)](#), [Sch. 4 para. 18\(1\)](#), [Sch. 6](#)  
**F16** Words “prescribed” to “1962” substituted (N.I.) for words “prescribed” to “court” by [Northern Ireland Act 1962 \(c. 30\)](#), [Sch. 1 Pt. I](#)
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#### Modifications etc. (not altering text)

- C13** [S. 24](#) restricted by [Patents Act 1977 \(c. 37\)](#), [Sch. 1 para 3\(2\)](#); amended by *ibid.*, para. 3(3)
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#### Marginal Citations

- M3** [1962 c. 30.](#)  
**M4** [1962 c. 30.](#)

## 25 Extension on ground of war loss of licensee.

Subject to the provisions of the last foregoing section, an order for the extension of the term of a patent may be made under that section on the application of a person holding a licence from the patentee giving to the licensee, or to the licensee and persons authorised by him, to the exclusion of all other persons, permission to make, use, exercise and vend the invention, if the court or comptroller is satisfied that the licensee as such has suffered any such loss or damage as is mentioned in subsection (1) of that section.

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

- C14** [S. 25](#) restricted by [Patents Act 1977 \(c. 37\)](#), [Sch. 1 para. 3\(2\)](#)

## 26 Patents of addition.

- (1) Subject to the provisions of this section, where application is made for a patent in respect of any improvement in or modification of an invention (in this Act referred to as “the main invention”) and the applicant also applies or has applied for a patent for that invention or is the patentee in respect thereof, the comptroller may, if the applicant so requests, grant the patent for the improvement or modification as a patent of addition.
- (2) Subject to the provisions of this section, where an invention, being an improvement in or modification of another invention, is the subject of an independent patent and the patentee in respect of that patent is also the patentee in respect of the patent for the main invention, the comptroller may, if the patentee so requests, by order revoke the patent for the improvement or modification and grant to the patentee a patent of addition in respect thereof, bearing the same date as the date of the patent so revoked.
- (3) A patent shall not be granted as a patent of addition unless the date of filing of the complete specification was the same as or later than the date of filing of the complete specification in respect of the main invention [<sup>F17</sup>and was earlier than the date of the appointed day].
- (4) A patent of addition shall not be sealed before the sealing of the patent for the main invention; and if the period within which, but for this provision, a request for the sealing of a patent of addition could be made under section nineteen of this Act expires

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before the period within which a request for the sealing of the patent for the main invention may be so made, the request for the sealing of the patent of addition may be made at any time within the last-mentioned period.

(5) A patent of addition shall be granted for a term equal to that of the patent for the main invention, or so much thereof as is unexpired, and shall remain in force during that term or until the previous cesser of the patent for the main invention and no longer: Provided that—

- (a) if the term of the patent for the main invention is extended under the foregoing provisions of this Act, the term of the patent of addition may also be extended accordingly; and
- (b) if the patent for the main invention is revoked under this Act, the court or comptroller, as the case may be, may order that the patent of addition shall become an independent patent for the remainder of the term of the patent for the main invention, and thereupon the patent shall continue in force as an independent patent accordingly.

(6) No renewal fees shall be payable in respect of a patent of addition; but, if any such patent becomes an independent patent by virtue of an order under the last foregoing subsection, the same fees shall thereafter be payable, upon the same dates, as if the patent had been originally granted as an independent patent.

(7) The grant of a patent of addition shall not be refused, and a patent granted as a patent of addition shall not be revoked or invalidated, on the ground only that the invention claimed in the complete specification does not involve any inventive step having regard to any publication or use of—

- (a) the main invention described in the complete specification relating thereto; or
- (b) any improvement in or modification of the main invention described in the complete specification of a patent of addition to the patent for the main invention or of an application for such a patent of addition;

and the validity of a patent of addition shall not be questioned on the ground that the invention ought to have been the subject of an independent patent.

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

**Textual Amendments**

**F17** Words inserted by [Patents Act 1977 \(c. 37\)](#), s. 127, [Sch. 1 para. 5](#)

*Restoration of lapsed patents and patent applications*

27 ..... **F18**

**Textual Amendments**

**F18** [S. 22\(4\)\(5\), 27](#) repealed by [Patents Act 1977 \(c. 37\)](#), [Sch. 6](#)

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## 28 Restoration of lapsed applications for patents.

- (1) Where a patent has not been sealed by reason only that the prescribed request was not made within the time allowed for that purpose by or under section nineteen of this Act, then if the comptroller is satisfied, upon application made within six months after the expiration of that time by the applicant for the patent, that the failure to make the request was unintentional, he may order the patent to be sealed notwithstanding that the prescribed request was not made as aforesaid.
- (2) An application under this section shall contain a statement (to be verified in such manner as may be prescribed) fully setting out the circumstances which led to the failure to make the prescribed request; and the comptroller may require from the applicant such further evidence as he may think necessary.
- (3) If after hearing the applicant (if the applicant so requires or the comptroller thinks fit) the comptroller is satisfied that a prima facie case has been made out for an order under this section, he shall advertise the application in the Journal; and within the prescribed period any person may give notice to the comptroller of opposition thereto on the ground that the failure to make the prescribed request was not unintentional.
- (4) If notice of opposition is given within the period aforesaid, the comptroller shall notify the applicant and shall give to him and to the opponent an opportunity to be heard before he decides the case.
- (5) If no notice of opposition is given within the period aforesaid, or if in the case of opposition the decision of the comptroller is in favour of the applicant, the comptroller shall, upon payment of the fee prescribed in respect of the making of the request for sealing and of such additional fee as may be prescribed, make the order in accordance with the application.
- (6) An order under this section for the sealing of a patent shall contain such provision as may be prescribed for the protection of persons who may have begun to avail themselves of the invention between the date when the time allowed by or under section nineteen of this Act for making the prescribed request expired and the date of the application under this section.
- (7) An appeal shall lie from any decision of the comptroller under this section.

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

**C15** S. 28 restricted by [Patents Act 1977 \(c. 37\)](#), s. 127, [Sch. 1 para. 1](#)

### *Amendment of specifications*

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

**C16** Ss. 29—31 restricted by [Patents Act 1977 \(c. 37\)](#), s. 127, [Sch. 1 para. 1](#)

## 29 Amendment of specification with leave of comptroller.

- (1) Subject to the provisions of section thirty-one of this Act, the comptroller may, upon application made under this section by a patentee, or by an applicant for a patent at any time after the acceptance of the complete specification, allow the complete

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specification to be amended subject to such conditions, if any, as the comptroller thinks fit:

Provided that the comptroller shall not allow a specification to be amended under this section upon an application made while any action before the court for infringement of the patent or any proceeding before the court for the revocation of the patent is pending.

- (2) Every application for leave to amend a specification under this section shall state the nature of the proposed amendment and shall give full particulars of the reasons for which the application is made.
- (3) Any application for leave to amend a specification under this section, and the nature of the proposed amendment, shall be advertised in the prescribed manner:  
Provided that where the application is made before the publication of the complete specification, the comptroller may, if he thinks fit, dispense with advertisement under this subsection or direct that advertisement shall be postponed until the complete specification is published.
- (4) Within the prescribed period after the advertisement of an application under this section, any person may give notice to the comptroller of opposition thereto; and where such a notice is given within the period aforesaid, the comptroller shall notify the person by whom the application under this section is made and shall give to that person and to the opponent an opportunity to be heard before he decides the case.
- (5) An appeal shall lie from any decision of the comptroller under this section.
- (6) This section shall not apply in relation to any amendment of a specification effected in proceedings in opposition to the grant of a patent or on a reference to the comptroller of a dispute as to the infringement or validity of a claim, or effected in pursuance of any provision of this Act authorising the comptroller to direct a reference to another specification or patent to be inserted, or to refuse to grant a patent, or to revoke a patent, unless the specification is amended to his satisfaction.

### **30 Amendment of specification with leave of the court.**

- (1) In any action for infringement of a patent or any proceeding before the court for the revocation of a patent, the court may, subject to the provisions of the next following section, by order allow the patentee to amend his complete specification in such manner, and subject to such terms as to costs, advertisements or otherwise, as the court may think fit; and if in any such proceedings for revocation the court decides that the patent is invalid, the court may allow the specification to be amended under this section instead of revoking the patent.
- (2) Where an application for an order under this section is made to the court, the applicant shall give notice of the application to the comptroller, and the comptroller shall be entitled to appear and be heard, and shall appear if so directed by the court.

### **31 Supplementary provisions as to amendment of specification.**

- (1) After the acceptance of a complete specification, no amendment thereof shall be effected except by way of disclaimer, correction or explanation, and no amendment thereof shall be allowed, except for the purpose of correcting an obvious mistake, the effect of which would be that the specification as amended would claim or describe matter not in substance disclosed in the specification before the amendment, or that

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any claim of the specification as amended would not fall wholly within the scope of a claim of the specification before the amendment.

- (2) Where, after the date of the publication of a complete specification, any amendment of the specification is allowed or approved by the comptroller, the court or the Appeal Tribunal under this Act, the right of the patentee or applicant to make the amendment shall not be called in question except on the ground of fraud; and the amendment shall in all courts and for all purposes be deemed to form part of the specification: Provided that in construing the specification as amended reference may be made to the specification as originally published.
- (3) Where, after the date of the publication of a complete specification, any amendment of the specification is allowed or approved as aforesaid, the fact that the specification has been amended shall be advertised in the Journal.

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

**C17** Reference to Appeal Tribunal to be construed as including reference to Patents Court or Court of Session: [Patents Act 1977 \(c. 37\)](#), [Sch. 4 para. 11\(5\)](#)

*Revocation and surrender of patents*

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

**C18** [Ss. 32, 33](#) restricted by [Patents Act 1977 \(c. 37\)](#), s. 127, [Sch. 1 para. 1](#)

## **32 Revocation of patent by court.**

- (1) Subject to the provisions of this Act, a patent may, on the petition of any person interested, be revoked by the court on any of the following grounds, that is to say,—
- (a) that the invention, so far as claimed in any claim of the complete specification, was claimed in a valid claim of earlier priority date contained in the complete specification of another patent granted in the United Kingdom;
  - (b) that the patent was granted on the application of a person not entitled under the provisions of this Act to apply therefor;
  - (c) that the patent was obtained in contravention of the rights of the petitioner or any person under or through whom he claims;
  - (d) that the subject of any claim of the complete specification is not an invention within the meaning of this Act;
  - (e) that the invention, so far as claimed in any claim of the complete specification, is not new having regard to what was known or used, before the priority date of the claim, in the United Kingdom;
  - (f) that the invention, so far as claimed in any claim of the complete specification, is obvious and does not involve any inventive step having regard to what was known or used, before the priority date of the claim, in the United Kingdom;
  - (g) that the invention, so far as claimed in any claim of the complete specification, is not useful;
  - (h) that the complete specification does not sufficiently and fairly describe the invention and the method by which it is to be performed, or does not disclose

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- the best method of performing it which was known to the applicant for the patent and for which he was entitled to claim protection;
- (i) that the scope of any claim of the complete specification is not sufficiently and clearly defined or that any claim of the complete specification is not fairly based on the matter disclosed in the specification;
  - (j) that the patent was obtained on a false suggestion or representation;
  - (k) that the primary or intended use or exercise of the invention is contrary to law;
  - (l) that the invention, so far as claimed in any claim of the complete specification, was secretly used in the United Kingdom, otherwise than as mentioned in subsection (2) of this section, before the priority date of that claim.
- (2) For the purposes of paragraph (1) of subsection (1) of this section, no account shall be taken of any use of the invention—
- (a) for the purpose of reasonable trial or experiment only; or
  - (b) by a Government department or any person authorised by a Government department, in consequence of the applicant for the patent or any person from whom he derives title having communicated or disclosed the invention directly or indirectly to a Government department or person authorised as aforesaid; or
  - (c) by any other person, in consequence of the applicant for the patent or any person from whom he derives title having communicated or disclosed the invention, and without the consent or acquiescence of the applicant or of any person from whom he derives title;
- and for the purposes of paragraph (e) or paragraph (f) of the said subsection (1) no account shall be taken of any secret use.
- (3) .....<sup>F19</sup>
- (4) Every ground on which a patent may be revoked shall be available as a ground of defence in any proceeding for the infringement of the patent.

#### Textual Amendments

**F19** S. 32(3) repealed by [Patents Act 1977 \(c. 37\)](#), [Sch. 3 para. 2\(b\)](#)

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

**C19** S. 32(1)(a) amended by [Patents Act 1977 \(c. 37\)](#), [s. 128\(4\)\(5\)](#)

**C20** S. 32(1)(j) excluded by [Patents Act 1977 \(c. 37\)](#), [Sch. 1 para. 6](#)

### 33 Revocation of patent by comptroller.

- [<sup>F20</sup>(1) Subject to the provisions of this Act, a patent may, on the application of any person interested, be revoked by the comptroller on any of the grounds set out in section 32(1) of this Act:]
- Provided that when an action for infringement, or proceedings for the revocation, of a patent are pending in any court, an application to the comptroller under this section shall not be made except with the leave of the court.
- (2) Where an application is made under this section, the comptroller shall notify the patentee and shall give to the applicant and the patentee an opportunity to be heard before deciding the case.

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(3) If on an application under this section the comptroller is satisfied that any of the grounds aforesaid are established, he may by order direct that the patent shall be revoked either unconditionally or unless within such time as may be specified in the order the complete specification is amended to his satisfaction:

... F21

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

[<sup>F22</sup>(5) A decision of the comptroller or on appeal from the comptroller shall not estop any party to civil proceedings in which infringement of a patent is in issue from alleging that any claim of the specification is invalid on any of the grounds set out in section 32(1) of this Act, whether or not any of the issues involved were decided in that decision.]

**Textual Amendments**

- F20 Words substituted by [Patents Act 1977 \(c. 37\)](#), s. 127, [Sch. 1 para. 7\(1\)](#)
- F21 [S. 33\(3\)](#) proviso repealed by [Patents Act 1977 \(c. 37\)](#), [Sch. 6](#)
- F22 [S. 33\(5\)](#) added by [Patents Act 1977 \(c. 37\)](#), s. 127, [Sch. 1 para. 7\(2\)](#)

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

- C21 [S. 33](#) amended by [Patents Act 1977 \(c. 37\)](#), [Sch. 4 para. 6](#)

34 ..... F23

**Textual Amendments**

- F23 [S. 34](#) repealed by [Patents Act 1977 \(c. 37\)](#), [Sch. 6](#)

*Voluntary endorsement of patent*

35— ..... F24  
41.

**Textual Amendments**

- F24 [Ss. 35–41](#) repealed with saving by [Patents Act 1977 \(c. 37\)](#), [Sch. 4 para. 8](#), [Sch. 6](#)

42 ..... F25

**Textual Amendments**

- F25 [S. 42](#) repealed with saving by [Patents Act 1977 \(c. 37\)](#), [Sch. 2 para. 2\(d\)](#), [Sch. 4 para. 7](#), [Sch. 6](#)

*Status: Point in time view as at 16/12/1996.*

*Changes to legislation: There are currently no known outstanding effects for the Patents Act 1949. (See end of Document for details)*

43— ..... F26  
45.

#### Textual Amendments

**F26** Ss. 43–45 repealed with saving by [Patents Act 1977 \(c. 37\)](#), Sch. 4 para. 8, [Sch. 6](#)

#### *Use of patented inventions for services of the Crown*

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

**C22** Ss. 46–49 restricted by [Patents Act 1977 \(c. 37\)](#), s. 127, [Sch. 1 para. 1](#)

#### **46 Use of patented inventions for services of the Crown.**

- (1) Notwithstanding anything in this Act, any Government department, and any person authorised in writing by a Government department, may make, use and exercise any patented invention for the services of the Crown in accordance with the following provisions of this section.
- (2) If and so far as the invention has before the priority date of the relevant claim of the complete specification been duly recorded by or tried by or on behalf of a Government department [<sup>F27</sup>or the United Kingdom Atomic Energy Authority] otherwise than in consequence of the communication thereof directly or indirectly by the patentee or any person from whom he derives title, any use of the invention by virtue of this section may be made free of any royalty or other payment to the patentee.
- (3) If and so far as the invention has not been so recorded or tried as aforesaid, any use of the invention made by virtue of this section at any time after the acceptance of the complete specification in respect of the patent, or in consequence of any such communication as aforesaid, shall be made upon such terms as may be agreed upon, either before or after the use, between the Government department and the patentee with the approval of the Treasury, or as may in default of agreement be determined by the court on a reference under section forty-eight of this Act.
- (4) The authority of a Government department in respect of an invention may be given under this section either before or after the patent is granted and either before or after the acts in respect of which the authority is given are done, and may be given to any person whether or not he is authorised directly or indirectly by the patentee to make, use, exercise or vend the invention.
- (5) Where any use of an invention is made by or with the authority of a Government department under this section, then, unless it appears to the department that it would be contrary to the public interest so to do, the department shall notify the patentee as soon as practicable after the use is begun, and furnish him with such information as to the extent of the use as he may from time to time require.
- <sup>F28</sup>(6) For the purposes of this and the next following section “the services of the Crown” shall be deemed to include—
  - (a) the supply to the government of any country outside the United Kingdom, in pursuance of an agreement or arrangement between Her Majesty’s



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Government in the United Kingdom and the government of that country, of articles required—

- (i) for the defence of that country; or
- (ii) for the defence of any other country whose government is party to any agreement or arrangement with Her Majesty's said Government in respect of defence matters;
- (b) the supply to the United Nations, or to the government of any country belonging to that organisation, in pursuance of an agreement or arrangement between Her Majesty's Government and that organisation or government, of articles required for any armed forces operating in pursuance of a resolution of that organisation or any organ of that organisation;

and the power of a Government department or a person authorised by a Government department under this section to make, use and exercise an invention shall include power to sell to any such government or to the said organisation any articles the supply of which is authorised by this subsection, and to sell to any person any articles made in the exercise of the powers conferred by this section which are no longer required for the purpose for which they were made.]

- (7) The purchaser of any articles sold in the exercise of powers conferred by this section, and any person claiming through him, shall have power to deal with them in the same manner as if the patent were held on behalf of His Majesty.

#### Textual Amendments

**F27** Words inserted by [Atomic Energy Authority Act 1954 \(c. 32\)](#), [Sch. 3](#)

**F28** [S. 46\(6\)](#) substituted by [Defence Contracts Act 1958 \(c. 38\)](#), [s. 1\(1\)](#)

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

**C23** [S. 46](#) extended by [S.I. 1965/1536](#), [Sch. 3](#) and [Health Services and Public Health Act 1968 \(c. 46\)](#), [s. 59\(1\)](#)

**C24** [S. 46\(3\)](#) modified by [Atomic Energy Authority \(Weapons Group\) Act 1973 \(c. 4\)](#), [s. 5\(2\)](#)

**C25** [S. 46\(6\)](#) modified by [Defence Contracts Act 1958 \(c. 38\)](#), [s. 1\(4\)\(b\)](#)

## 47 Rights of third parties in respect of Crown use.

- (1) In relation to any use of a patented invention, or an invention in respect of which an application for a patent is pending, made for the services of the Crown—
  - (a) by a Government department or a person authorised by a Government department under the last foregoing section; or
  - (b) by the patentee or applicant for the patent to the order of a Government department,

the provisions of any licence, assignment or agreement made, whether before or after the commencement of this Act, between the patentee or applicant for the patent, or any person who derives title from him or from whom he derives title, and any person other than a Government department shall be of no effect so far as those provisions restrict or regulate the use of the invention, or any model, document or information relating thereto, or provide for the making of payments in respect of any such use, or calculated by reference thereto; and the reproduction or publication of any model or document in connection with the said use shall not be deemed to be an infringement of any copyright [<sup>F29</sup>or design right] subsisting in the model or document [<sup>F30</sup>or of any topography right].

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- (2) Where an exclusive licence granted otherwise than for royalties or other benefits determined by reference to the use of the invention is in force under the patent, then—
- (a) in relation to any use of the invention which, but for the provisions of this and the last foregoing section, would constitute an infringement of the rights of the licensee, subsection (3) of the last foregoing section shall have effect as if for the reference to the patentee there were substituted a reference to the licensee; and
  - (b) in relation to any use of the invention by the licensee by virtue of an authority given under the last foregoing section, that section shall have effect as if the said subsection (3) were omitted.
- (3) Subject to the provisions of the last foregoing subsection, where the patent, or the right to apply for or obtain the patent, has been assigned to the patentee in consideration of royalties or other benefits determined by reference to the use of the invention, then—
- (a) in relation to any use of the invention by virtue of section forty-six of this Act, subsection (3) of that section shall have effect as if the reference to the patentee included a reference to the assignor, and any sum payable by virtue of that subsection shall be divided between the patentee and the assignor in such proportion as may be agreed upon between them or as may in default of agreement be determined by the court on a reference under the next following section; and
  - (b) in relation to any use of the invention made for the services of the Crown by the patentee to the order of a Government department, subsection (3) of section forty-six of this Act shall have effect as if that use were made by virtue of an authority given under that section.
- (4) Where, under subsection (3) of section forty-six of this Act, payments are required to be made by a Government department to a patentee in respect of any use of an invention, any person, being the holder of an exclusive licence under the patent (not being such a licence as is mentioned in subsection (2) of this section) authorising him to make that use of the invention, shall be entitled to recover from the patentee such part (if any) of those payments as may be agreed upon between that person and the patentee, or as may in default of agreement be determined by the court under the next following section to be just having regard to any expenditure incurred by that person—
- (a) in developing the said invention; or
  - (b) in making payments to the patentee, other than royalties or other payments determined by reference to the use of the invention, in consideration of the licence;

and if, at any time before the amount of any such payment has been agreed upon between the Government department and the patentee, that person gives notice in writing of his interest to the department, any agreement as to the amount of that payment shall be of no effect unless it is made with his consent.

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#### **Textual Amendments**

- F29** Words inserted by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), s. 303(1), [Sch. 7 para. 5](#)  
**F30** Words inserted by [S.I. 1987/1497](#), [reg. 9\(2\) para. 2](#) Table B
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#### **Modifications etc. (not altering text)**

- C26** [S. 47](#) amended by [Defence Contracts Act 1958 \(c. 38\)](#), s. [1\(3\)](#) extended by [S.I. 1965/1536](#), [Sch. 3](#)

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#### **48 Reference of disputes as to Crown use.**

- (1) Any dispute as to the exercise by a Government department or a person authorised by a Government department of the powers conferred by section forty-six of this Act, or as to terms for the use of an invention for the services of the Crown thereunder, or as to the right of any person to receive any part of a payment made in pursuance of subsection (3) of that section, may be referred to the court by either party to the dispute [<sup>F31</sup>in such manner as may be prescribed by rules of court.]
- (2) In any proceedings under this section to which a Government department are a party, the department may—
  - (a) if the patentee is a party to the proceedings, apply for revocation of the patent upon any ground upon which a patent may be revoked under section thirty-two of this Act;
  - (b) in any case, put in issue the validity of the patent without applying for its revocation.
- (3) If in such proceedings as aforesaid any question arises whether an invention has been recorded or tried as mentioned in section forty-six of this Act, and the disclosure of any document recording the invention, or of any evidence of the trial thereof, would in the opinion of the department be prejudicial to the public interest, the disclosure may be made confidentially to counsel for the other party or to an independent expert mutually agreed upon.
- (4) In determining under this section any dispute between a Government department and any person as to terms for the use of an invention for the services of the Crown, the court shall have regard to any benefit or compensation which that person or any person from whom he derives title may have received, or may be entitled to receive, directly or indirectly from any Government department in respect of the invention in question.
- (5) In any proceedings under this section the court may at any time order the whole proceedings or any question or issue of fact arising therein to be referred to a special or official referee or an arbitrator on such terms as the court may direct; and references to the court in the foregoing provisions of this section shall be construed accordingly.

#### **Textual Amendments**

**F31** Words repealed (N.I.) by [Northern Ireland Act 1962 \(c. 30\)](#), [Sch. 1 Pt. I](#)

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

**C27** [S. 48](#) extended by [S.I. 1965/1536](#), [Sch. 3](#)

**C28** [S. 48\(2\)–\(5\)](#) applied with modifications by [British Telecommunications Act 1981 \(c. 38, SIF 96\)](#), s. 88, [Sch. 5 para. 10\(2\)](#)

#### **49 Special provisions as to Crown use during emergency.**

- (1) During any period of emergency within the meaning of this section, the powers exercisable in relation to an invention by a Government department, or a person authorised by a Government department under section forty-six of this Act, shall include power to make, use, exercise and vend the invention for any purpose which appears to the department necessary or expedient—
  - (a) for the efficient prosecution of any war in which His Majesty may be engaged;

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- (b) for the maintenance of supplies and services essential to the life of the community;
- (c) for securing a sufficiency of supplies and services essential to the well-being of the community;
- (d) for promoting the productivity of industry, commerce and agriculture;
- (e) for fostering and directing exports and reducing imports, or imports of any classes, from all or any countries and for redressing the balance of trade;
- (f) generally for ensuring that the whole resources of the community are available for use, and are used, in a manner best calculated to serve the interests of the community; or
- (g) for assisting the relief of suffering and the restoration and distribution of essential supplies and services in any part of His Majesty's dominions or any foreign countries that are in grave distress as the result of war;

and any reference in that section or in section forty-seven or section forty-eight of this Act to the services of the Crown shall be construed as including a reference to the purposes aforesaid.

- (2) In this section the expression "period of emergency" means the period ending with the tenth day of December, nineteen hundred and fifty, or such later date as may be prescribed by Order in Council, and any other period beginning on such date as may be declared by Order in Council to be the commencement, and ending on such date as may be so declared to be the termination, of a period of emergency for the purposes of this section.
- (3) A draft of any Order in Council under this section shall be laid before Parliament; and the draft shall not be submitted to His Majesty except in pursuance of an Address presented by each House of Parliament praying that the Order be made.

*Anticipation, etc.*

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

**C29** Ss. 50—53 restricted by [Patents Act 1977 \(c. 37\)](#), s. 127, [Sch. 1 para. 1](#)

**50 Previous publication.**

- (1) An invention claimed in a complete specification shall not be deemed to have been anticipated by reason only that the invention was published in the United Kingdom—
  - (a) in a specification filed in pursuance of an application for a patent made in the United Kingdom and dated more than fifty years before the date of filing of the first-mentioned specification;
  - (b) in a specification describing the invention for the purposes of an application for protection in any country outside the United Kingdom made more than fifty years before that date; or
  - (c) in any abridgement of or extract from any such specification published under the authority of the comptroller or of the government of any country outside the United Kingdom.
- (2) Subject as hereinafter provided, an invention claimed in a complete specification shall not be deemed to have been anticipated by reason only that the invention was published

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before the priority date of the relevant claim of the specification, if the patentee or applicant for the patent proves—

- (a) that the matter published was obtained from him or (where he is not himself the true and first inventor) from any person from whom he derives title, and was published without his consent or the consent of any such person; and
- (b) where the patentee or applicant for the patent or any person from whom he derives title learned of the publication before the date of the application for the patent or (in the case of a convention application) before the date of the application for protection in a convention country, that the application or the application in a convention country, as the case may be, was made as soon as reasonably practicable thereafter:

Provided that this subsection shall not apply if the invention was before the priority date of the claim commercially worked in the United Kingdom, otherwise than for the purpose of reasonable trial, either by the patentee or applicant for the patent or any person from whom he derives title or by any other person with the consent of the patentee or applicant for the patent or any person from whom he derives title.

- (3) Where a complete specification is filed in pursuance of an application for a patent made by a person being the true and first inventor or deriving title from him, an invention claimed in that specification shall not be deemed to have been anticipated by reason only of any other application for a patent in respect of the same invention, made in contravention of the rights of that person, or by reason only that after the date of filing of that other application the invention was used or published, without the consent of that person, by the applicant in respect of that other application, or by any other person in consequence of any disclosure of the invention by that applicant.
- (4) Notwithstanding anything in this Act, the comptroller shall not refuse to accept a complete specification or to grant a patent, and a patent shall not be revoked or invalidated, by reason only of any circumstances which, by virtue of this section, do not constitute an anticipation of the invention claimed in the specification.

## **51 Previous communication, display or working.**

- (1) An invention claimed in a complete specification shall not be deemed to have been anticipated by reason only of the communication of the invention to a Government department or to any person authorised by a Government department to investigate the invention or its merits, or of anything done, in consequence of such a communication, for the purpose of the investigation.
- (2) An invention claimed in a complete specification shall not be deemed to have been anticipated by reason only of—
  - (a) the display of the invention with the consent of the true and first inventor at an exhibition certified by the Board of Trade for the purposes of this section, or the use thereof with his consent for the purposes of such an exhibition in the place where it is held.
  - (b) the publication of any description of the invention in consequence of the display or use of the invention at any such exhibition as aforesaid;
  - (c) the use of the invention, after it has been displayed or used at any such exhibition as aforesaid and during the period of the exhibition, by any person without the consent of the true and first inventor; or

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- (d) the description of the invention in a paper read by the true and first inventor before a learned society or published with his consent in the transactions of such a society,
- if the application for the patent is made by the true and first inventor or a person deriving title from him not later than six months after the opening of the exhibition or the reading or publication of the paper as the case may be.
- (3) An invention claimed in a complete specification shall not be deemed to have been anticipated by reason only that, at any time within one year before the priority date of the relevant claim of the specification, the invention was publicly worked in the United Kingdom—
- (a) by the patentee or applicant for the patent or any person from whom he derives title; or
- (b) by any other person with the consent of the patentee or applicant for the patent or any person from whom he derives title,
- if the working was effected for the purpose of reasonable trial only and if it was reasonably necessary, having regard to the nature of the invention, that the working for that purpose should be effected in public.
- (4) Notwithstanding anything in this Act, the comptroller shall not refuse to accept a complete specification or to grant a patent, and a patent shall not be revoked or invalidated, by reason only of any circumstances which, by virtue of this section, do not constitute an anticipation of the invention claimed in the specification.

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

**C30** S. 51 extended (E.W.) by [Food Act 1984 \(c. 30, SIF 53:1\)](#), s. 5(4)

**C31** S. 51 extended by (S.) [Food and Drugs \(Scotland\) Act 1956 \(c. 30\)](#), s. 5(4)

**C32** S. 51(1) extended by [British Telecommunications Act 1981 \(c. 38, SIF 96\)](#), s. 88, [Sch. 5 para. 11\(2\)](#)

**52 Use and publication after provisional specification or foreign application.**

- (1) Where a complete specification is filed or proceeded with in pursuance of an application which was accompanied by a provisional specification or by a specification treated by virtue of a direction under subsection (4) of section three of this Act as a provisional specification, then, notwithstanding anything in this Act, the comptroller shall not refuse to grant the patent, and the patent shall not be revoked or invalidated by reason only that any matter described in the provisional specification or in the specification treated as aforesaid as a provisional specification was used or published at any time after the date of filing of that specification.
- (2) Where a complete specification is filed in pursuance of a convention application, then, notwithstanding anything in this Act, the comptroller shall not refuse to grant the patent, and the patent shall not be revoked or invalidated by reason only that any matter disclosed in any application for protection in a convention country upon which the convention application is founded was used or published at any time after the date of the application for protection.

**53 Priority date in case of obtaining.**

Where an application is made for a patent for an invention which has been claimed in a complete specification filed in pursuance of any other such application, then if—

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- (a) the comptroller has refused to grant a patent in pursuance of that other application on the ground specified in paragraph (a) of subsection (1) of section fourteen of this Act;
- (b) a patent granted in pursuance of that other application has been revoked by the court or the comptroller on the ground specified in paragraph (a) of subsection (1) of section fourteen or paragraph (c) of subsection (1) of section thirty-two of this Act; or
- (c) the complete specification filed in pursuance of the said other application has, in proceedings under section fourteen or section thirty-three of this Act, been amended by the exclusion of the claim relating to the said invention in consequence of a finding by the comptroller that the invention was obtained by the applicant or patentee from any other person,

the comptroller may direct that the first-mentioned application and any specification filed in pursuance thereof shall be deemed, for the purposes of the provisions of this Act relating to the priority date of claims of complete specifications, to have been filed on the date on which the corresponding document was or was deemed to have been filed in the proceedings upon the said other application.

*Miscellaneous provisions as to rights in inventions*

54 ..... F32

**Textual Amendments**

**F32** Ss. 54, 57, 58, 68 repealed by [Patents Act 1977 \(c. 37\)](#), [Sch. 6](#)

**55 Power of comptroller to give directions to co-owners.**

- (1) Where two or more persons are registered as grantee or proprietor of a patent, the comptroller may, upon application made to him in the prescribed manner by any of those persons, give such directions in accordance with the application as to the sale or lease of the patent or any interest therein, the grant of licences under the patent, or the exercise of any right under the last foregoing section in relation thereto, as he thinks fit.
- (2) If any person registered as grantee or proprietor of the patent fails to execute any instrument or to do any other thing required for the carrying out of any direction given under this section within fourteen days after being requested in writing so to do by any of the other persons so registered, the comptroller may, upon application made to him in the prescribed manner by any such other person, give directions empowering any person to execute that instrument or to do that thing in the name and on behalf of the person in default.
- (3) Before giving directions in pursuance of an application under this section, the comptroller shall give an opportunity to be heard—
  - (a) in the case of an application under subsection (1) of this section, to the other person or persons registered as grantee or proprietor of the patent;
  - (b) in the case of an application under subsection (2) of this section, to the person in default.
- (4) An appeal shall lie from any decision or direction of the comptroller under this section.



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- (5) No directions shall be given under this section so as to affect the mutual rights or obligations of trustees or of the personal representatives of a deceased person, or their rights or obligations as such.

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

**C33** S. 55 restricted by [Patents Act 1977 \(c. 37\)](#), s. 127, [Sch. 1 para. 1](#)

**56 Disputes as to inventions made by employees.**

- (1) Where a dispute arises between an employer and a person who is or was at the material time his employee as to the rights of the parties in respect of an invention made by the employee either alone or jointly with other employees or in respect of any patent granted or to be granted in respect thereof, the comptroller may, upon application made to him in the prescribed manner by either of the parties, and after giving to each of them an opportunity to be heard, determine the matter in dispute, and may make such orders for giving effect to his decision as he considers expedient:  
Provided that if it appears to the comptroller upon any application under this section that the matter in dispute involves questions which would more properly be determined by the court, he may decline to deal therewith.
- (2) In proceedings before the court between an employer and a person who is or was at the material time his employee, or upon an application made to the comptroller under subsection (1) of this section, the court or comptroller may, unless satisfied that one or other of the parties is entitled, to the exclusion of the other, to the benefit of an invention made by the employee, by order provide for the apportionment between them of the benefit of the invention, and of any patent granted or to be granted in respect thereof, in such manner as the court or comptroller considers just.
- (3) A decision of the comptroller under this section shall have the same effect as between the parties and persons claiming under them as a decision of the court.
- (4) An appeal shall lie from any decision of the comptroller under this section.

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

**C34** S. 56 restricted by [Patents Act 1977 \(c. 37\)](#), s. 127, [Sch. 1 para. 1](#)

**57, 58.** ..... <sup>F33</sup>

**Textual Amendments**

**F33** Ss. 54, 57, 58, 68 repealed by [Patents Act 1977 \(c. 37\)](#), [Sch. 6](#)



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*Proceedings for infringement, etc.*

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

C35 Ss. 59—67 restricted by [Patents Act 1977 \(c. 37\)](#), s. 127, [Sch. 1 para. 1](#)

**59 Restrictions on recovery of damages for infringement.**

- (1) In proceedings for the infringement of a patent damages shall not be awarded against a defendant who proves that at the date of the infringement he was not aware, and had no reasonable ground for supposing, that the patent existed; and a person shall not be deemed to have been aware or to have had reasonable grounds for supposing as aforesaid by reason only of the application to an article of the word “patent”, “patented”, or any word or words expressing or implying that a patent has been obtained for the article, unless the number of the patent accompanied the word or words in question.
- (2) In any proceeding for infringement of a patent the court may, if it thinks fit, refuse to award any damages in respect of any infringement committed after a failure to pay any renewal fee within the prescribed period and before any extension of that period.
- (3) Where an amendment of a specification by way of disclaimer, correction or explanation has been allowed under this Act after the publication of the specification, no damages shall be awarded in any proceeding in respect of the use of the invention before the date of the decision allowing the amendment, unless the court is satisfied that the specification as originally published was framed in good faith and with reasonable skill and knowledge.
- (4) Nothing in this section shall affect the power of the court to grant an injunction in any proceedings for infringement of a patent.

**60 Order for account in action for infringement.**

In an action for infringement of a patent the plaintiff shall be entitled, at his option, to an account of profits in lieu of damages.

**61 Counterclaim for revocation in action for infringement.**

A defendant in an action for infringement of a patent may, without presenting a petition, apply in accordance with [<sup>F34</sup>rules of court][<sup>F34</sup>rules made under section seven of the <sup>M5</sup>Northern Ireland Act 1962] by way of counterclaim in the action for revocation of the patent.

**Textual Amendments**

F34 Words “rules” to “1962” substituted (N.I.) for words “rules of court” by [Northern Ireland Act 1962 \(c. 30\)](#), [Sch. 1 Pt. 1](#)

**Marginal Citations**

M5 1962 c. 30.

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## **62 Relief for infringement of partially valid specification.**

- (1) If in proceedings for infringement of a patent it is found that any claim of the specification, being a claim in respect of which infringement is alleged, is valid, but that any other claim is invalid, the court may grant relief in respect of any valid claim which is infringed:  
Provided that the court shall not grant relief by way of damages or costs except in the circumstances mentioned in the next following subsection.
- (2) Where the patent is dated before the first day of November, nineteen hundred and thirty-two, or the plaintiff proves that the invalid claim was framed in good faith and with reasonable skill and knowledge, the court shall grant relief in respect of any valid claim which is infringed subject to the discretion of the court as to costs and as to the date from which damages should be reckoned.
- (3) As a condition of relief under subsection (1) or subsection (2) of this section the court may direct that the specification shall be amended to its satisfaction upon an application made for that purpose under section thirty of this Act, and such an application may be made accordingly whether or not all other issues in the proceedings have been determined.
- (4) In relation to a patent which is dated before the first day of November, nineteen hundred and thirty-two, the provisions of this section shall have effect notwithstanding anything in subsection (3) of section fifty-nine of this Act.

## **63 Proceedings for infringement by exclusive licensee.**

- (1) Subject to the provisions of this section, the holder of an exclusive licence under a patent shall have the like right as the patentee to take proceedings in respect of any infringement of the patent committed after the date of the licence, and in awarding damages or granting any other relief in any such proceedings, the court shall take into consideration any loss suffered or likely to be suffered by the exclusive licensee as such or, as the case may be, the profits earned by means of the infringement so far as it constitutes an infringement of the rights of the exclusive licensee as such.
- (2) In any proceedings taken by the holder of an exclusive licence by virtue of this section, the patentee shall, unless he is joined as plaintiff in the proceedings, be added as defendant:  
Provided that a patentee so added as defendant shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

## **64 Certificate of contested validity of specification.**

- (1) If in any proceedings before the court the validity of any claim of a specification is contested, and that claim is found by the court to be valid, the court may certify that the validity of that claim was contested in those proceedings.
- (2) Where any such certificate has been granted, then if in any subsequent proceedings before the court for infringement of the patent or for revocation of the patent, a final order or judgment is made or given in favour of the party relying on the validity of the patent, that party shall, unless the court otherwise directs, be entitled to his costs as between solicitor and client so far as concerns the claim in respect of which the certificate was granted:

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*Status: Point in time view as at 16/12/1996.*

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Provided that this subsection shall not apply to the costs of any appeal in any such proceedings as aforesaid.

**65 Remedy for groundless threats of infringement proceedings.**

- (1) Where any person (whether entitled to or interested in a patent or an application for a patent or not) by circulars, advertisements or otherwise threatens any other person with proceedings for infringement of a patent, any person aggrieved thereby may bring an action against him for any such relief as is mentioned in the next following subsection.
- (2) Unless in any action brought by virtue of this section the defendant proves that the acts in respect of which proceedings were threatened constitute or, if done, would constitute, an infringement of a patent or of rights arising from the publication of a complete specification in respect of a claim of the specification not shown by the plaintiff to be invalid, the plaintiff shall be entitled to the following relief, that is to say:—
  - (a) a declaration to the effect that the threats are unjustifiable;
  - (b) an injunction against the continuance of the threats; and
  - (c) such damages, if any, as he has sustained thereby.
- (3) For the avoidance of doubt it is hereby declared that a mere notification of the existence of a patent does not constitute a threat of proceedings within the meaning of this section.

**66 Power of court to make declaration as to non-infringement.**

- (1) A declaration that the use by any person of any process, or the making or use or sale by any person of any article, does not or would not constitute an infringement of a claim of a patent may be made by the court in proceedings between that person and the patentee or the holder of an exclusive licence under the patent, notwithstanding that no assertion to the contrary has been made by the patentee or licensee, if it is shown—
  - (a) that the plaintiff has applied in writing to the patentee or licensee for a written acknowledgment to the effect of the declaration claimed, and has furnished him with full particulars in writing of the process or article in question; and
  - (b) that the patentee or licensee has refused or neglected to give such an acknowledgment.
- (2) The costs of all parties in proceedings for a declaration brought by virtue of this section shall, unless for special reasons the court thinks fit to order otherwise, be paid by the plaintiff.
- (3) The validity of a claim of the specification of a patent shall not be called in question in proceedings for a declaration brought by virtue of this section, and accordingly the making or refusal of such a declaration in the case of a patent shall not be deemed to imply that the patent is valid.
- (4) Proceedings for a declaration may be brought by virtue of this section at any time after the date of the publication of the complete specification in pursuance of an application for a patent, and references in this section to the patentee shall be construed accordingly.

*Status: Point in time view as at 16/12/1996.*

*Changes to legislation: There are currently no known outstanding effects for the Patents Act 1949. (See end of Document for details)*

## 67 Reference to comptroller of disputes as to infringement.

- (1) Any dispute between a patentee or an exclusive licensee and any other person—
- (a) whether any claim of the specification of a patent is infringed by anything done by that other person; or
  - (b) whether any such claim which is alleged to be so infringed is valid,
- may, by agreement between the parties, be referred to the comptroller for determination in accordance with such procedure as may be prescribed by rules made by the Board of Trade under this Act:  
Provided that if it appears to the comptroller that any dispute referred to him under this section involves questions which would more properly be determined by the court, he may decline to deal therewith.
- (2) If on a reference under this section the comptroller finds that any claim of the specification of the patent is valid and is infringed, he may, subject to the provisions of this section and of section fifty-nine of this Act, grant relief by way of damages; but the damages awarded in the proceedings shall not (unless otherwise agreed between the parties) exceed one thousand pounds.
- (3) Subsection (1) of section thirty and section sixty-two of this Act shall apply to proceedings before the comptroller on a reference under this section as they apply to proceedings for infringement of a patent before the court.
- (4) [<sup>F35</sup>Part I of the Arbitration Act 1996], shall not apply to proceedings before the comptroller on a reference under this section.
- (5) The decision of the comptroller on a reference under this section shall not be binding upon any party thereto in any subsequent proceedings before the court for infringement of the patent or for revocation of the patent; but a patentee or licensee shall not be entitled, in any such subsequent proceedings for infringement, to any relief in respect of an alleged infringement which was in issue in proceedings under this section.

### Textual Amendments

**F35** Words in s. 67(4) substituted (31.1.1997) by 1996 c. 23, s. 107(1), **Sch. 3 para. 8**; S.I. 1996/3146, **art. 3** (with Sch. 2 )

*International Agreements, etc.*

68 ..... <sup>F36</sup>

### Textual Amendments

**F36** Ss. 54, 57, 58, 68 repealed by Patents Act 1977 (c. 37), **Sch. 6**

## 69 Supplementary provisions as to convention applications.

- (1) Where a person has applied for protection for an invention by an application which—

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- (a) in accordance with the terms of a treaty subsisting between any two or more convention countries, is equivalent to an application duly made in any one of those convention countries, or
- (b) in accordance with the law of any convention country, is equivalent to an application duly made in that convention country,

he shall be deemed for the purposes of this Act to have applied in that convention country.

(2) For the purpose of this Act, matter shall be deemed to have been disclosed in an application for protection in a convention country if it was claimed or disclosed (otherwise than by way of disclaimer or acknowledgment of prior art) in that application or in documents submitted by the applicant for protection in support of and at the same time as that application; but no account shall be taken of any disclosure effected by any such document unless a copy of the document is filed at the Patent Office with the convention application or within such period as may be prescribed after the filing of that application.

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

**C36** S. 69 restricted by [Patents Act 1977 \(c. 37\)](#), s. 127, [Sch. 1 para. 1](#); modified by *ibid.*, Sch. 4 para. 18(3)

70 ..... F37

**Textual Amendments**

**F37** S. 70 repealed with saving by [Patents Act 1977 \(c. 37\)](#), Sch. 4 para. 3, [Sch. 6](#)

71,72. .... F38

**Textual Amendments**

**F38** Ss. 71, 72 repealed by [Patents Act 1977 \(c. 37\)](#), [Sch. 3 para. 2\(e\)\(f\)](#), Sch. 6

*Register of patents, etc.*

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

**C37** Ss. 76, 80 restricted by [Patents Act 1977 \(c. 37\)](#), s. 127, [Sch. 1 para. 1](#)

73— ..... F39

75.

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*Changes to legislation: There are currently no known outstanding effects for the Patents Act 1949. (See end of Document for details)*

**Textual Amendments**

**F39** Ss. 73–75, 77–79, 81–86 repealed by [Patents Act 1977 \(c. 37\)](#), [Sch. 6](#)

**76 Power to correct clerical errors, etc.**

- (1) The comptroller may, in accordance with the provisions of this section, correct any clerical error in any patent, any application for a patent or any document filed in pursuance of such an application, or any error in the register of patents.
- (2) A correction may be made in pursuance of this section either upon a request in writing made by any person interested and accompanied by the prescribed fee, or without such a request.
- (3) Where the comptroller proposes to make any such correction as aforesaid otherwise than in pursuance of a request made under this section, he shall give notice of the proposal to the patentee or the applicant for the patent, as the case may be, and to any other person who appears to him to be concerned, and shall give them an opportunity to be heard before making the correction.
- (4) Where a request is made under this section for the correction of any error in a patent or application for a patent or any document filed in pursuance of such an application, and it appears to the comptroller that the correction would materially alter the meaning or scope of the document to which the request relates, and ought not to be made without notice to persons affected thereby, he shall require notice of the nature of the proposed correction to be advertised in the prescribed manner
- (5) Within the prescribed time after any such advertisement as aforesaid any person interested may give notice to the comptroller of opposition to the request, and where such notice of opposition is given the comptroller shall give notice thereof to the person by whom the request was made, and shall give to him and to the opponent an opportunity to be heard before he decides the case.

77— ..... F40  
79.

**Textual Amendments**

**F40** Ss. 73–75, 77–79, 81–86 repealed by [Patents Act 1977 \(c. 37\)](#), [Sch. 6](#)

**80 Loss or destruction of patent.**

Where the comptroller is satisfied that a patent has been lost or destroyed or cannot be produced, he may at any time cause a duplicate thereof to be sealed.

81— ..... F41  
83.

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*Changes to legislation: There are currently no known outstanding effects for the Patents Act 1949. (See end of Document for details)*

**Textual Amendments**

**F41** Ss. 73–75, 77–79, 81–86 repealed by Patents Act 1977 (c. 37), Sch. 6

*The Court and the Appeal Tribunal*

**84—** ..... **F42**  
**86.**

**Textual Amendments**

**F42** Ss. 73–75, 77–79, 81–86 repealed by Patents Act 1977 (c. 37), Sch. 6

**87 Appeals to Court of Appeal and Court of Session.**

(1) ..... **F43**

(2) No appeal shall lie from any decision of the court under section twenty-three or section twenty-four of this Act.

(3) ..... **F44**

**Textual Amendments**

**F43** S. 87(1) repealed with saving by Patents Act 1977 (c. 37), Sch. 4 para. 13, Sch. 6

**F44** Ss. 87(3), 88–91, 93–95 repealed by Patents Act 1977 (c. 37), Sch. 6

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

**C38** S. 87(2) restricted by Patents Act 1977 (c. 37), s. 127 Sch. 1 para. 1

**88, 89.** ..... **F45**

**Textual Amendments**

**F45** Ss. 87(3), 88–91, 93–95 repealed by Patents Act 1977 (c. 37), Sch. 6

*Offences*

**90, 91.** ..... **F46**

**Textual Amendments**

**F46** Ss. 87(3), 88–91, 93–95 repealed by Patents Act 1977 (c. 37), Sch. 6

*Status: Point in time view as at 16/12/1996.*  
*Changes to legislation: There are currently no known outstanding effects for the Patents Act 1949. (See end of Document for details)*

**92 Unauthorised assumption of Royal Arms.**

(1) The grant of a patent under this Act shall not be deemed to authorise the patentee to use the Royal Arms or to place the Royal Arms on any patented article.

<sup>F47</sup>(2) .....

**Textual Amendments**

**F47** S. 92(2) repealed (31.10.1994) by 1994 c. 26, s. 106(2), **Sch. 5**; S.I. 1994/2550, **art. 2**

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

**C39** S. 92(1) restricted by **Patents Act 1977 (c. 37)**, s. 127, **Sch. 1 para. 1**

**93** ..... <sup>F48</sup>

**Textual Amendments**

**F48** Ss. 87(3), 88–91, 93–95 repealed by **Patents Act 1977 (c. 37)**, **Sch. 6**

*Rules, etc.*

**94, 95.** ..... <sup>F49</sup>

**Textual Amendments**

**F49** Ss. 87(3), 88–91, 93–95 repealed by **Patents Act 1977 (c. 37)**, **Sch. 6**

**96 Proceedings of Board of Trade.**

(1) ..... <sup>F50</sup>

(2) All documents purporting to be orders made by the Board of Trade and to be sealed with the seal of the Board, or to be signed by a secretary, under-secretary or assistant secretary of the Board, or by any person authorised in that behalf by the President of the Board, shall be received in evidence, and shall be deemed to be such orders without further proof, unless the contrary is shown.

(3) A certificate, signed by the President of the Board of Trade, that any order made or act done is the order or act of the Board, shall be conclusive evidence of the fact so certified.

**Textual Amendments**

**F50** S. 96(1) repealed by **Industrial Expansion Act 1968 (c. 32)**, **Sch. 4**

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

**C40** S. 96 restricted by **Patents Act 1977 (c. 37)**, s. 127, **Sch. 1 para. 1**



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*Supplemental*

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

**C41** Ss. 101, 102(1), 103—107 restricted by [Patents Act 1977 \(c. 37\)](#), s. 127, [Sch. 1 para. 1](#)

**97—** ..... <sup>F51</sup>  
**100.**

**Textual Amendments**

**F51** Ss. 97—100, 102(2) repealed by [Patents Act 1977 \(c. 37\)](#), [Sch. 6](#)

**101 Interpretation.**

(1) In this Act, except where the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say

[<sup>F52</sup>“Appeal Tribunal” means the Appeal Tribunal constituted and acting in accordance with section 85 of this Act as amended by the <sup>M6</sup>Administration of Justice Act 1969];

“applicant” includes a person in whose favour a direction has been given under section seventeen of this Act, and the personal representative of a deceased applicant;

[<sup>F53</sup>“appointed day” means the day appointed under section 132 of the <sup>M7</sup>Patents Act 1977 for the coming into operation of Schedule 1 to that Act];

“article” includes any substance or material, and any plant, machinery or apparatus, whether affixed to land or not;

“assignee” includes the personal representative of a deceased assignee, and references to the assignee of any person include references to the assignee of the personal representative or assignee of that person;

“comptroller” means the Comptroller-General of Patents, Designs and Trade Marks;

“convention application” has the meaning assigned to it by subsection (4) of section one of this Act;

“court” means the High Court;

“date of filing”, in relation to any document filed under this Act, means the date on which the document is filed or, where it is deemed by virtue of any provision of this Act or of rules made thereunder to have been filed on any different date, means the date on which it is deemed to be filed;

“exclusive licence” means a licence from a patentee which confers on the licensee, or on the licensee and persons authorised by him, to the exclusion of all other persons (including the patentee), any right in respect of the patented invention, and “exclusive licensee” shall be construed accordingly;

“invention” means any manner of new manufacture the subject of letters patent and grant of privilege within section six of the <sup>M8</sup>Statute of Monopolies of Monopolies and any new method or process of testing applicable to the improvement or control of manufacture, and includes an alleged invention;

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“Journal” has the meaning assigned to it by subsection (2) of section ninety-four of this Act;

“patent” means Letters Patent for an invention;

“patent agent” means a person carrying on for gain in the United Kingdom the business of acting as agent for other persons for the purpose of applying for or obtaining patents in the United Kingdom or elsewhere;

“patent of addition” means a patent granted in accordance with section twenty-six of this Act;

“patentee” means the person or persons for the time being entered on the register of patents as grantee or proprietor of the patent;

“prescribed” means prescribed by rules made by the Board of Trade under this Act;

“priority date” has the meaning assigned to it by section five of this Act;

“published”, except in relation to a complete specification, means made available to the public; and without prejudice to the generality of the foregoing provision a document shall be deemed for the purposes of this Act to be published if it can be inspected as of right at any place in the United Kingdom by members of the public, whether upon payment of a fee or otherwise;

“the Statute of Monopolies” means the Act of the twenty-first year of the reign of King James the First, chapter three, intituled “An Act concerning monopolies and dispensations with penal laws and the forfeiture thereof”.

- (2) For the purposes of subsection (3) of section one, so far as it relates to a convention application, and for the purposes of section seventy-two of this Act, the expression “personal representative”, in relation to a deceased person, includes the legal representative of the deceased appointed in any country outside the United Kingdom.

#### Textual Amendments

**F52** Definition substituted by [Administration of Justice Act 1969 \(c. 58\)](#), [Sch. 1](#)

**F53** Definition inserted by [Patents Act 1977 \(c. 37\)](#), [Sch. 1 para. 8](#)

#### Marginal Citations

**M6** [1969 c. 58](#).

**M7** [1977 c. 37](#).

**M8** [1623 c. 3](#).

## 102 Saving for Royal prerogative, etc.

- (1) Nothing in this Act shall take away, abridge or prejudicially affect the prerogative of the Crown in relation to the granting of letters patent or to the withholding of a grant thereof.

- (2) ..... <sup>F54</sup>

#### Textual Amendments

**F54** [Ss. 97–100, 102\(2\)](#) repealed by [Patents Act 1977 \(c. 37\)](#), [Sch. 6](#)

*Status: Point in time view as at 16/12/1996.*

*Changes to legislation: There are currently no known outstanding effects for the Patents Act 1949. (See end of Document for details)*

### 103 Application to Scotland.

In the application of this Act to Scotland—

- (1) In any action for infringement of a patent in Scotland the action shall be tried without a jury unless the court otherwise direct, but otherwise nothing shall affect the jurisdiction and forms of process of the courts in Scotland in such an action or in any action or proceeding respecting a patent hitherto competent to those courts:
- <sup>F55</sup>(2) .....
- (3) The provisions of this Act conferring a special jurisdiction on the court as defined by this Act shall not, except so far as the jurisdiction extends, affect the jurisdiction of any court in Scotland in any proceedings relating to patents; and with reference to any such proceedings, the term “the Court” shall mean the Court of Session:
- (4) Notwithstanding anything in this Act, the expression “the Court” shall in reference to proceedings in Scotland for the extension of the term of a patent mean the Court of Session:
- (5) If any rectification of a register under this Act is required in pursuance of any proceedings in a court, a copy of the order, decree, or other authority for the rectification shall be served on the comptroller, and he shall rectify the register accordingly:
- (6) The expression “injunction” means “interdict”; the expression “chose in action” means a right of action or an incorporeal moveable; the expression “an account of profits” means “an accounting and payment of profits”; the expression “arbitrator” means “arbiter”; the expression “plaintiff” means “pursuer”; the expression “defendant” means “defender”.

#### Textual Amendments

**F55** S. 103(2) repealed (S.)(1.8.1991) by S.I. 1991/1621, art. 3

### 104 Application to Northern Ireland.

In the application of this Act to Northern Ireland—

- (1) All parties shall, notwithstanding anything in this Act, have in Northern Ireland their remedies under or in respect of a patent as if the same had been granted to extend to Northern Ireland only:
- (2) The provisions of this Act conferring a special jurisdiction on the court, as defined by this Act, shall not, except so far as the jurisdiction extends, affect the jurisdiction of any court in Northern Ireland in any proceedings relating to patents; and with reference to any such proceedings the term “the Court” means the High Court in Northern Ireland:
- (3) If any rectification of a register under this Act is required in pursuance of any proceeding in a court, a copy of the order, decree, or other authority for the rectification shall be served on the comptroller, and he shall rectify the register accordingly:
- (4) References to enactments of the Parliament of the United Kingdom shall be construed as references to those enactments as they apply in Northern Ireland:

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(5) References to a Government department shall be construed as including references to a department of the Government of Northern Ireland:

(6) . . . <sup>F56</sup>

#### Textual Amendments

**F56** S. 104(6) repealed by Northern Ireland Act 1962 (c. 30), Sch. 4 Pt. IV

### 105 Isle of Man.

This Act shall extend to the Isle of Man, subject to the following modifications:—

- (1) Nothing in this Act shall affect the jurisdiction of the courts in the Isle of Man in proceedings for infringement, or in any action or proceeding respecting a patent competent to those courts;
- (2) The punishment for a misdemeanour under this Act in the Isle of Man shall be imprisonment for any term not exceeding two years, with or without hard labour, and with or without a fine not exceeding one hundred pounds, at the discretion of the court:
- (3) Any offence under this Act committed in the Isle of Man which would in England be punishable on summary conviction may be prosecuted, and any fine in respect thereof recovered, at the instance of any person aggrieved, in the manner in which offences punishable on summary conviction may for the time being be prosecuted.

### 106 Repeals, transitional provisions and amendment.

- (1) Subject to the provisions of this section, the enactments specified in the Second Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.
- (2) Without prejudice to the provisions of the [<sup>F57M9</sup>Interpretation Act 1978], with respect to repeals, the transitional provisions set out in the Third Schedule to this Act shall have effect for the purposes of the transition to the provisions of this Act from the law in force before the commencement of the <sup>M10</sup>Patents and Designs Act 1949.
- (3) For subsection (8) of section twelve of the Atomic Energy Act, 1946, there shall be substituted the following subsection :—

“(8) The power of the Minister of Supply and persons authorised by the Minister of Supply under sections forty-six of the Patents Act, 1949, shall include power to make, use, exercise or vend an invention for such purposes relating to the production or use of atomic energy or research into matters connected therewith as the Minister thinks necessary or expedient, and any reference in that section or in sections forty-seven or forty-eight of that Act to the services of the Crown shall be construed as including a reference to those purposes.”

#### Textual Amendments

**F57** Words substituted by virtue of Interpretation Act 1978 (c. 30), s. 25(2)

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*Status: Point in time view as at 16/12/1996.*  
*Changes to legislation: There are currently no known outstanding effects for the Patents Act 1949. (See end of Document for details)*

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

**C42** The text of Ss. 106(1), (3), Sch. 2 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

**Marginal Citations**

**M9** 1978 c. 30.

**M10** 1949 c. 62.

**107 Short title and commencement.**

- (1) This Act may be cited as the Patents Act 1949.
- (2) This Act shall come into operation on the first day of January, nineteen hundred and fifty, immediately after the coming into operation of the Patents and Designs Act 1949.

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*Status: Point in time view as at 16/12/1996.*  
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## SCHEDULES

### <sup>F58</sup>F58 FIRST SCHEDULE

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#### Textual Amendments

**F58** Sch. 1 repealed by [Patents Act 1977 \(c. 37\)](#), [Sch. 6](#)

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F58

**Status:**

Point in time view as at 16/12/1996.

**Changes to legislation:**

There are currently no known outstanding effects for the Patents Act 1949.