

---

STATUTORY INSTRUMENTS

---

**2009 No. 2092 (L. 24)**

**SUPREME COURT OF ENGLAND AND WALES**

**The Civil Procedure (Amendment) Rules 2009**

*Made* - - - - - *28th July 2009*

*Laid before Parliament* *30th July 2009*

*Coming into force in accordance with rule 1*

The Civil Procedure Rule Committee, in exercise of the power conferred by section 2 of the Civil Procedure Act 1997<sup>(1)</sup> to make rules of court under section 1 of that Act, after consulting in accordance with section 2(6)(a) of that Act, makes the following Rules—

**Citation, commencement and interpretation**

- 1.—(1) These Rules may be cited as the Civil Procedure (Amendment) Rules 2009.
- (2) Except as provided in paragraph (3), these Rules come into force on 1st October 2009.
- (3) Rule 13 of these Rules comes into force on 31st August 2009.
2. In these Rules—
  - (a) a reference to a Part or rule by number alone means the Part or rule so numbered in the Civil Procedure Rules 1998<sup>(2)</sup>;
  - (b) a reference to an Order by number and prefixed “RSC” means the RSC Order so numbered in Schedule 1 to those Rules; and
  - (c) a reference to an Order by number and prefixed “CCR” means the CCR Order so numbered in Schedule 2 to those Rules.

**Amendments to the Civil Procedure Rules 1998**

3. In Part 6—
  - (a) in rule 6.3—
    - (i) in paragraph 2(b), for “set out in the Companies Act 1985<sup>(3)</sup> or” substitute “permitted under”; and

---

(1) 1997 c. 12.  
(2) S.I. 1998/3132. There is a relevant amendment in section 59(5) of, and paragraph 1(2) of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4). There are also relevant amendments in S.I. 2000/221, 2000/1317, 2001/256, 2001/4015, 2002/2058, 2002/3219, 2003/3361, 2004/3419, 2005/656, 2005/2292, 2005/3515, 2006/3435, 2007/2204, 2008/2178, 2008/3085 and 2008/3327.  
(3) 1985 c. 6.

- (ii) in paragraph 3(b) for “set out in section 725 of the Companies Act 1985.” substitute “permitted under the Companies Act 2006(4) as applied with modification by regulations made under the Limited Liability Partnerships Act 2000(5).”;
- (b) in rule 6.20—
  - (i) in paragraph 2(b), for “set out in the Companies Act 1985 or” substitute “permitted under”; and
  - (ii) in paragraph 3(b) for “set out in section 725 of the Companies Act 1985.” substitute “permitted under the Companies Act 2006 as applied with modification by regulations made under the Limited Liability Partnerships Act 2000.”; and
- (c) in rule 6.52(2)(a), for “Supreme Court” substitute “Senior Courts”.
- 4. In rule 34.19(2)(a), for “Supreme Court” substitute “Senior Courts”.
- 5. In Part 35—
  - (a) in the table of contents, for “Interpretation” insert “Interpretation and definitions”;
  - (b) for rule 35.2 substitute—

**“Interpretation and definitions**

**35.2.—**(1) A reference to an ‘expert’ in this Part is a reference to a person who has been instructed to give or prepare expert evidence for the purpose of proceedings.

(2) ‘Single joint expert’ means an expert instructed to prepare a report for the court on behalf of two or more of the parties (including the claimant) to the proceedings.”;

- (c) for rule 35.3(1) substitute “It is the duty of experts to help the court on matters within their expertise”;
- (d) in rule 35.3(2), for “he has received instructions or by whom he is paid” substitute “experts have received instructions or by whom they are paid.”;
- (e) for rule 35.4(2) substitute—
  - “(2) When parties apply for permission they must identify—
    - (a) the field in which expert evidence is required; and
    - (b) where practicable, the name of the proposed expert.”;
- (f) in rule 35.4(3) omit “under this rule”;
- (g) after rule 35.4(3) insert—
  - “(3A) Where a claim has been allocated to the small claims track or the fast track, if permission is given for expert evidence, it will normally be given for evidence from only one expert on a particular issue.
  - (Paragraph 7 of practice direction 35 sets out some of the circumstances the court will consider when deciding whether expert evidence should be given by a single joint expert.)”
- (h) for rule 35.4(4) substitute—
  - “(4) The court may limit the amount of a party’s expert’s fees and expenses that may be recovered from any other party.”;

---

(4) 2006 c. 46.  
(5) 2000 c. 12.

- (i) in rule 35.5(2), after “If a claim is on the” insert “small claims track or the”;
- (j) in rule 35.6—
  - (i) for paragraph (1) substitute—

“(1) A party may put written questions about an expert’s report (which must be proportionate) to—

    - (a) an expert instructed by another party; or
    - (b) a single joint expert appointed under rule 35.7.”; and
  - (ii) in paragraph (4)(a) omit “in accordance with this rule”;
- (k) for rule 35.7 substitute—

**“Court’s power to direct that evidence is to be given by a single joint expert**

**35.7.**—(1) Where two or more parties wish to submit expert evidence on a particular issue, the court may direct that the evidence on that issue is to be given by a single joint expert.

(2) Where the parties who wish to submit the evidence (“the relevant parties”) cannot agree who should be the single joint expert, the court may—

- (a) select the expert from a list prepared or identified by the relevant parties; or
  - (b) direct that the expert be selected in such other manner as the court may direct.”;
- (l) in rule 35.8(1), for “each instructing” substitute “any relevant”;
  - (m) for rule 35.8(2) substitute—

“(2) When a party gives instructions to the expert that party must, at the same time, send a copy to the other relevant parties.”;
  - (n) in rule 35.8(4)(b), for “the instructing” substitute “some or all of the relevant”;
  - (o) in rule 35.8(5), for “instructing” substitute “relevant”;
  - (p) in rule 35.9, for “available to the other party” substitute “available to another party”;
  - (q) in rule 35.10—
    - (i) in paragraph (1) for “the relevant practice direction” substitute “practice direction 35”;
    - (ii) for paragraph (2) substitute—

“(2) At the end of an expert’s report there must be a statement that the expert understands and has complied with their duty to the court.”;
  - (r) for rule 35.12(3) substitute—

“(3) The court may direct that following a discussion between the experts they must prepare a statement for the court setting out those issues on which—

    - (a) they agree; and
    - (b) they disagree, with a summary of their reasons for disagreeing.”;
  - (s) in rule 35.14—
    - (i) for paragraph (1) substitute—

“(1) Experts may file written requests for directions for the purpose of assisting them in carrying out their functions.”; and
    - (ii) for paragraph (2) substitute—

- “(2) Experts must, unless the court orders otherwise, provide copies of the proposed requests for directions under paragraph (1)—
- (a) to the party instructing them, at least 7 days before they file the requests; and
  - (b) to all other parties, at least 4 days before they file them.”; and
- (t) for rule 35.15 substitute—

**“Assessors**

**35.15.**—(1) This rule applies where the court appoints one or more persons under section 70 of the Senior Courts Act 1981<sup>(6)</sup> or section 63 of the County Courts Act 1984<sup>(7)</sup> as an assessor.

(2) An assessor will assist the court in dealing with a matter in which the assessor has skill and experience.

(3) An assessor will take such part in the proceedings as the court may direct and in particular the court may direct an assessor to—

- (a) prepare a report for the court on any matter at issue in the proceedings; and
- (b) attend the whole or any part of the trial to advise the court on any such matter.

(4) If an assessor prepares a report for the court before the trial has begun—

- (a) the court will send a copy to each of the parties; and
- (b) the parties may use it at trial.

(5) The remuneration to be paid to an assessor is to be determined by the court and will form part of the costs of the proceedings.

(6) The court may order any party to deposit in the court office a specified sum in respect of an assessor’s fees and, where it does so, the assessor will not be asked to act until the sum has been deposited.

(7) Paragraphs (5) and (6) do not apply where the remuneration of the assessor is to be paid out of money provided by Parliament.”.

6. In rule 43.2(1)—

- (a) In sub-paragraph (b) for “Supreme Court” substitute “Senior Courts”;
- (b) after sub-paragraph (b) insert—
  - “(ba) “Costs Office” means the Senior Courts Costs Office;”;
- (c) in sub-paragraph (d)(iv) for “Supreme Court Costs Office” substitute “Costs Office”; and
- (d) in sub-paragraph (e) omit “as such”.

7. In Part 44—

- (a) in the table of contents, after the entry “Costs-only proceeding” insert—

---

“Costs-only proceedings – costs in respect of insurance Rule 44.12B”;  
premium in publication cases

---

- (b) in rule 44.3B—

---

<sup>(6)</sup> 1981 c. 54.  
<sup>(7)</sup> 1984 c. 28.

- (i) at the beginning of paragraph (1), for “A” substitute “Unless the court orders otherwise, a”;
- (ii) in paragraph (1)(c)—
  - (aa) omit “in the proceedings”; and
  - (bb) for “he” substitute “that party”;
- (iii) in paragraph (1)(d)—
  - (aa) for “a party” substitute “that party”; and
  - (bb) for “conditional fee agreement.” substitute “conditional fee agreement;”;  
and
- (iv) after paragraph (1)(d) insert—
  - “(e) any insurance premium where that party has failed to provide information about the insurance policy in question by the time required by a rule, practice direction or court order.  
  
(Paragraph 9.3 of the Practice Direction (Pre-Action Conduct) provides that a party must inform any other party as soon as possible about a funding arrangement entered into before the start of proceedings.)”;
- (c) in rule 44.12A(4), after “(4A)” insert “(and subject to rule 44.12B)”;
- (d) after rule 44.12A insert—

**“Costs-only proceedings – costs in respect of insurance premium in publication cases**

**44.12B.**—(1) If in proceedings to which rule 44.12A applies it appears to the court that—

- (a) if proceedings had been started, they would have been publication proceedings;
- (b) one party admitted liability and made an offer of settlement on the basis of that admission;
- (c) agreement was reached after that admission of liability and offer of settlement; and
- (d) either—
  - (i) the party making the admission of liability and offer of settlement was not provided by the other party with the information about an insurance policy as required by the Practice Direction (Pre-Action Conduct); or
  - (ii) that party made the admission of liability and offer of settlement before, or within 42 days of, being provided by the other party with that information,

no costs may be recovered by the other party in respect of the insurance premium.

(2) In this rule, “publication proceedings” means proceedings for—

- (a) defamation;
- (b) malicious falsehood; or
- (c) breach of confidence involving publication to the public at large.”.

**8.** In rule 47.4(2), for “Supreme Court Costs Office” substitute “Costs Office”.

**9.** For rule 49 substitute—

“**49.** These Rules apply to proceedings under—

- (a) the Companies Act 1985<sup>(8)</sup>;
- (b) the Companies Act 2006<sup>(9)</sup>; and
- (c) other legislation relating to companies and limited liability partnerships,

subject to the provision of the relevant practice direction which applies to those proceedings.”.

**10.** In the second parenthesis below rule 52.16(7), for “House of Lords” substitute “Supreme Court”.

**11.** In rule 55.10—

(a) for paragraph (2) substitute—

“(2) Within 5 days of receiving notification of the date of the hearing by the court, the claimant must send a notice to—

- (a) the property, addressed to “the tenant or the occupier”; and
- (b) the housing department of the local authority within which the property is located.”;

(b) in paragraph (3), for “paragraph (2)” substitute “paragraph (2)(a)”;

(c) after paragraph (3) insert—

“(3A) The notice referred to in paragraph 2(b) must contain the information in paragraph (3) and must state the full address of the property.”; and

(d) in paragraph (4)—

- (i) in sub-paragraph (a) for “notice” substitute “notices”; and
- (ii) in sub-paragraph (b) for “he has served it” substitute “they have been sent”.

**12.** For Part 63 substitute Part 63 (Intellectual Property Claims) as set out in Schedule 1 to these Rules.

**13.** In Part 65—

(a) in the table of contents, after “Proceedings following arrest Rule 65.30” insert—

---

“VI DRINKING BANNING ORDERS UNDER THE VIOLENT CRIME REDUCTION ACT 2006 <sup>(10)</sup>	
Scope of this Section and interpretation	Rule 65.31
Application where the relevant authority is a party in principal proceedings	Rule 65.32
Application where the relevant authority is not a party in principal proceedings	Rule 65.33
Application by a relevant authority to join a person to the principal proceedings	Rule 65.34
Evidence	Rule 65.35

---

<sup>(8)</sup> 1985 c. 6.

<sup>(9)</sup> 2006 c. 46.

<sup>(10)</sup> 2006 c. 38.

Application for an interim order

Rule 65.36”;

- (b) in rule 65.1(e) after “Protection from Harassment Act 1997(11);” omit “and”;
- (c) after rule 65.1(e) insert—
  - “(f) in Section VI, about applications for drinking banning orders and interim drinking banning orders under sections 4 and 9 of the Violent Crime Reduction Act 2006; and”;
- (d) after rule 65.30, insert Section VI (Drinking Banning Orders under the Violent Crime Reduction Act 2006) as set out in Schedule 2 to these Rules.

**14.** In Part 68—

- (a) in the table of contents—
  - (i) for “Making of order of reference” substitute “Making of order”; and
  - (ii) after the entry “Making of order” so inserted, insert the entry—
    - “Request to apply the urgent preliminary ruling procedure Rule 68.2A”;
- (b) in rule 68.1—
  - (i) in sub-paragraph (c)(v), after “Contractual Obligations”, for “.” substitute “; and”;
  - and
  - (ii) after sub-paragraph (c) insert—
    - “(d) “reference” means a request to the European Court for a preliminary ruling”;
- (c) in the heading to rule 68.2 omit “of reference”;
- (d) in rule 68.2(3), for “The request to the European Court for a preliminary ruling” substitute “The reference, which must contain the information required by the practice direction supplementing this Part.”;
- (e) after rule 68.2 insert—

**“Request to apply the urgent preliminary ruling procedure**

**68.2A.** Any request by the court to the European Court that the preliminary ruling be dealt with under its urgent preliminary ruling procedure must be made in a document separate from the order or in a covering letter.”; and

- (f) in rule 68.3—
  - (i) for paragraph (1) substitute—
    - “(1) The Senior Master will send a copy of—
      - (a) the order; and
      - (b) where relevant, any request to apply the urgent preliminary ruling procedure
  - to the Registrar of the European Court.”; and
  - (ii) in paragraph (2), for “the proper officer” substitute “a court officer”.

**15.** In Part 74—

- (a) for rule 74.6(1)(b) substitute—
  - “(b) by any of the methods of service permitted under the Companies Act 2006; or”;

- (b) in rule 74.15(2), for “Supreme Court” substitute “Senior Courts”; and
- (c) in rule 74.25(1), for “Supreme Court” substitute “Senior Courts”.

**16.** In Part 76—

- (a) for rule 76.10(2)(b) substitute—
  - “(b) unless the court otherwise directs—
    - (i) in the case of directions given under section 3(2)(c), that date must be no later than 7 days from the date on which the notice of the terms of the control order is delivered to the controlled person in accordance with section 7(8) of the Act; or
    - (ii) in the case of directions given under section 3(6)(b) or (c), that date must be 7 days from the date on which the court’s determination on the reference is made.”;
- (b) for rule 76.19(4) substitute—
  - “(4) References in this rule—
    - (a) to an order requiring anonymity for the controlled person are to be construed in accordance with paragraph 5(3) of the Schedule to the Act; and
    - (b) to the controlled person, in relation to a time before the control order has been made, are to be construed in accordance with paragraph 5(4) of the Schedule to the Act.”;
- (c) in rule 76.24(b), before “cross-examining” insert “adducing evidence and”; and
- (d) in rule 76.26, after paragraph (5) insert—
  - “(5A) A special advocate shall be entitled to adduce evidence and to cross-examine witnesses.”.

**17.** In the heading to Part 79 omit “Financial Restrictions”.

**18.** In Part 79—

- (a) in the table of contents, after the entry “Supply of court documents” insert the entry—

---

“5. NOTIFICATION ORDERS

Application for a notification order	Rule 79.31”
--------------------------------------	-------------

- (b) in rule 79.1(1)—
  - (i) at the end of sub-paragraph (a) omit “and”;
  - (ii) at the end of sub-paragraph (b) for “.” substitute “; and”; and
  - (iii) after sub-paragraph (b) insert—
    - “(c) applications for a notification order under Schedule 4 to the Counter-Terrorism Act 2008(12).”;
- (c) in rule 79.15, for “79.1(1)” substitute “79.1(1)(a) and (b)”;
- (d) in rule 79.17(1), after “All proceedings to which” insert “Section 2 or 3 of”;
- (e) in rule 79.18—
  - (i) in paragraph (1), after “in proceedings to which” insert “Section 2 or 3 of”; and
  - (ii) in paragraph (3), after “any proceedings to which” insert “Section 2 or 3 of”;

- (f) in rule 79.22—
  - (i) in paragraph (1), after “any proceedings to which” insert “Section 2 or 3 of”;
  - (ii) in paragraph (2), after “Subject to the other rules in” insert “Section 2, 3 and this Section of”;
  - (iii) after paragraph (4) insert—
    - “(4A) A special advocate is entitled to adduce evidence and to cross-examine witnesses.”;
- (g) in rule 79.23—
  - (i) in paragraph (1)(a), after “in the proceedings to which” insert “Section 2 or 3 of”;
  - (ii) in paragraph (3), after “the proceedings to which” insert “Section 2 or 3 of”; and
  - (iii) in paragraph (4), after “the proceedings to which” insert “Section 2 or 3 of”;
- (h) in rule 79.28(1), after “in any proceedings to which” insert “Section 2 or 3 of”;
- (i) in rule 79.29(1), after “in any proceedings to which” insert “Section 2 or 3 of”;
- (j) in rule 79.30, after “to any proceedings to which” insert “Section 2 or 3 of”; and
- (k) after rule 79.30 insert—
  - “SECTION 5

#### NOTIFICATION ORDERS

##### **Applications for a notification order**

**79.31.**—(1) An application for a notification order under Schedule 4 to the Act must be made in accordance with Part 8.

(2) Where the defendant wishes to serve a notice under paragraph 2(4) of Schedule 4 to the Act, the defendant must file and serve the notice with an acknowledgment of service not more than 14 days after service of the claim form.”.

**19.** In RSC Order 46, rule 6(6)(d), for “Supreme Court” substitute “Senior Courts”.

**20.** In RSC Order 79, rule 9(11), in the three places where it occurs, for “House of Lords” substitute “the Supreme Court”.

**21.** In RSC Order 109—

- (a) in rule 1(1)—
  - (i) in sub-paragraph (a), for “House of Lords” substitute “Supreme Court”; and
  - (ii) in sub-paragraph (b), for “House of Lords” substitute “Supreme Court”;
- (b) in rule 3(1), in the two places where it occurs, for “House of Lords” substitute “Supreme Court”; and
- (c) in rule 4—
  - (i) in paragraph (1), in the two places where it occurs, for “House of Lords” substitute “Supreme Court”; and
  - (ii) in paragraph (2) for “House of Lords” substitute “the Supreme Court”.

**22.** In CCR Order 1, rule 6(d), for “Supreme Court” substitute “Senior Courts”.

### **Transitional Provision**

**23.** The amendments made by rule 7 of these Rules to Part 44 do not apply to proceedings where the insurance policy was taken out before the 1st October 2009 and Part 44 in force immediately before that date will continue to apply to those proceedings as if that Part had not been amended.

*Clarke of Stone-cum-Ebony, M.R.*  
*Martin Moore-Bick, L.J.*  
*Rupert Jackson, L.J.*  
*Michael Briggs, J.*  
*HHJ Stephen Stewart Q.C.*  
*District Judge Robert Hill*  
*District Judge Suzanne Burn*  
*William Featherby Q.C.*  
*David di Mambro*  
*Richard Walford*  
*Katy Peters*  
*Qasim Nawaz*  
*David Grant*  
*Peter Candon*

I allow these Rules  
Signed by authority of the Lord Chancellor

28th July 2009

*Claire M Ward*  
Parliamentary Under Secretary of State  
Ministry of Justice

SCHEDULE 1

Rule 12

“PART 63  
INTELLECTUAL PROPERTY CLAIMS

**Contents of this Part**

---

Scope of this Part and interpretation	Rule 63.1
I PATENTS AND REGISTERED DESIGNS	
Scope of Section I and allocation	Rule 63.2
Specialist list	Rule 63.3
Patents judge	Rule 63.4
Starting the claim	Rule 63.5
Claim for infringement or challenge to validity of a patent or registered design	Rule 63.6
Defence and reply	Rule 63.7
Case management	Rule 63.8
Disclosure and inspection	Rule 63.9
Application to amend a patent specification in existing proceedings	Rule 63.10
Court’s determination of question or application	Rule 63.11
Application by employee for compensation	Rule 63.12
II REGISTERED TRADE MARKS AND OTHER INTELLECTUAL PROPERTY RIGHTS	
Allocation	Rule 63.13
III SERVICE OF DOCUMENTS AND PARTICIPATION BY THE COMPTROLLER	
Service of documents	Rule 63.14
Participation by the Comptroller	Rule 63.15
IV APPEALS	
Appeals from decisions of the Comptroller or the registrar	Rule 63.16

---

**Scope of this Part and interpretation**

- 63.1.**—(1) This Part applies to all intellectual property claims including—  
(a) registered intellectual property rights such as—

- (i) patents;
- (ii) registered designs; and
- (iii) registered trade marks; and
- (b) unregistered intellectual property rights such as—
  - (i) copyright;
  - (ii) design right;
  - (iii) the right to prevent passing off; and
  - (iv) the other rights set out in the practice direction.
- (2) In this Part—
  - (a) “the 1977 Act” means the Patents Act 1977<sup>(13)</sup>;
  - (b) “the 1988 Act” means the Copyright, Designs and Patents Act 1988<sup>(14)</sup>;
  - (c) “the 1994 Act” means the Trade Marks Act 1994<sup>(15)</sup>;
  - (d) “the Comptroller” means the Comptroller General of Patents, Designs and Trade Marks;
  - (e) “patent” means a patent under the 1977 Act or a supplementary protection certificate granted by the Patent Office under Article 10(1) of [Council Regulation \(EEC\) No. 1768/92](#)<sup>(16)</sup> or of Regulation (EC) No. 1610/96 of the European Parliament and the Council<sup>(17)</sup> and includes any application for a patent or supplementary protection certificate;
  - (f) “Patents Court” means the Patents Court of the High Court constituted as part of the Chancery Division by section 6(1) of the Senior Courts Act 1981<sup>(18)</sup>;
  - (g) “patents county court” means a county court designated as a patents county court under section 287(1) of the 1988 Act;
  - (h) “patents judge” means a person nominated under section 291(1) of the 1988 Act as the patents judge of a patents county court;
  - (i) “the practice direction” means the Practice Direction supplementing this Part;
  - (j) “the register” means whichever of the following registers is appropriate—
    - (i) patents maintained by the Comptroller under section 32 of the 1977 Act;
    - (ii) designs maintained by the registrar under section 17 of the Registered Designs Act 1949<sup>(19)</sup>;
    - (iii) trade marks maintained by the registrar under section 63 of the 1994 Act;
    - (iv) Community trade marks maintained by the Office for Harmonisation in the Internal Market under Article 83 of Council Regulation (EC) No. 40/94<sup>(20)</sup>;
    - (v) Community designs maintained by the Office for Harmonisation in the Internal Market under Article 72 of Council Regulation (EC) No. 6/2002<sup>(21)</sup>; and

---

<sup>(13)</sup> 1977 c. 37.

<sup>(14)</sup> 1988 c. 48.

<sup>(15)</sup> 1994 c. 26.

<sup>(16)</sup> OJ No L182, 2.7.1992, p.1.

<sup>(17)</sup> OJ No L198, 8.8.1996, p.30.

<sup>(18)</sup> 1981 c. 54.

<sup>(19)</sup> 1949 c. 88.

<sup>(20)</sup> OJ No L11, 14.1.1994, p.1.

<sup>(21)</sup> OJ No L3, 5.1.2002, p.1.

- (vi) plant varieties maintained by the Controller under regulation 12 of the Plant Breeders' Rights Regulations 1998<sup>(22)</sup>; and
- (k) “the registrar” means—
  - (i) the registrar of trade marks; or
  - (ii) the registrar of registered designs,  
whichever is appropriate.
- (3) Claims to which this Part applies are allocated to the multi-track.

### *I PATENTS AND REGISTERED DESIGNS*

#### **Scope of Section I and allocation**

- 63.2.**—(1) This Section applies to—
- (a) any claim under—
    - (i) the 1977 Act;
    - (ii) the Registered Designs Act 1949;
    - (iii) the Defence Contracts Act 1958<sup>(23)</sup>; and
  - (b) any claim relating to—
    - (i) Community registered designs;
    - (ii) semiconductor topography rights; or
    - (iii) plant varieties.
- (2) Claims to which this Section applies must be started in—
- (a) the Patents Court; or
  - (b) a patents county court.

#### **Specialist list**

**63.3.** Claims in the Patents Court and a patents county court form specialist lists for the purpose of rule 30.5.

#### **Patents judge**

**63.4.**—(1) Subject to paragraph (2), proceedings in a patents county court will be dealt with by the patents judge of that court.

(2) When a matter needs to be dealt with urgently and it is not practicable or appropriate for the patents judge to deal with such a matter, the matter may be dealt with by another judge with appropriate specialist experience nominated by the Chancellor of the High Court.

#### **Starting the claim**

- 63.5.** Claims to which this Section applies must be started—
- (a) by a Part 7 claim form; or
  - (b) in existing proceedings under Part 20.

---

<sup>(22)</sup> S.I. 1998/1027.

<sup>(23)</sup> 1958 c. 38.

### **Claim for infringement or challenge to validity of a patent or registered design**

**63.6.** A statement of case in a claim for infringement or a claim in which the validity of a patent or registered design is challenged must contain particulars as set out in the practice direction.

### **Defence and reply**

**63.7.** Part 15 applies with the modification—

- (a) to rule 15.4(1)(b) that in a claim for infringement under rule 63.6, the period for filing a defence where the defendant files an acknowledgment of service under Part 10 is 42 days after service of the particulars of claim;
- (b) that where rule 15.4(2) provides for a longer period to file a defence than in rule 63.7(a), then the period of time in rule 15.4(2) will apply; and
- (c) to rule 15.8 that the claimant must—
  - (i) file any reply to a defence; and
  - (ii) serve it on all other parties,within 21 days of service of the defence.

### **Case management**

**63.8.—**(1) Parties do not need to file an allocation questionnaire.

(2) The following provisions only of Part 29 apply—

- (a) rule 29.3(2) (legal representatives to attend case management conferences);
- (b) rule 29.4 (the court's approval of agreed proposals for the management of proceedings); and
- (c) rule 29.5 (variation of case management timetable) with the exception of paragraph (1)(b) and (c).

(3) As soon as practicable the court will hold a case management conference which must be fixed in accordance with the practice direction.

### **Disclosure and inspection**

**63.9.** Part 31 is modified to the extent set out in the practice direction.

### **Application to amend a patent specification in existing proceedings**

**63.10.—**(1) An application under section 75 of the 1977 Act for permission to amend the specification of a patent by the proprietor of the patent must be made by application notice.

(2) The application notice must—

- (a) give particulars of—
  - (i) the proposed amendment sought; and
  - (ii) the grounds upon which the amendment is sought;
- (b) state whether the applicant will contend that the claims prior to the amendment are valid; and
- (c) be served by the applicant on all parties and the Comptroller within 7 days of it being filed.

(3) The application notice must, if it is reasonably possible, be served on the Comptroller electronically.

(4) Unless the court otherwise orders, the Comptroller will, as soon as practicable, advertise the application to amend in the journal.

(5) The advertisement will state that any person may apply to the Comptroller for a copy of the application notice.

(6) Within 14 days of the first appearance of the advertisement any person who wishes to oppose the application must file and serve on all parties and the Comptroller a notice opposing the application which must include the grounds relied on.

(7) Within 28 days of the first appearance of the advertisement the applicant must apply to the court for directions.

(8) Unless the court otherwise orders, the applicant must within 7 days serve on the Comptroller any order of the court on the application.

(9) In this rule “the journal” means the journal published pursuant to rules under section 123(6) of the 1977 Act.

#### **Court’s determination of question or application**

**63.11.**—(1) This rule applies where the Comptroller—

- (a) declines to deal with a question under section 8(7), 12(2), 37(8) or 61(5) of the 1977 Act;
- (b) declines to deal with an application under section 40(5) of the 1977 Act; or
- (c) certifies under section 72(7)(b) of the 1977 Act that the court should determine the question whether a patent should be revoked.

(2) Any person seeking the court’s determination of that question or application must start a claim for that purpose within 14 days of receiving notification of the Comptroller’s decision.

(3) A person who fails to start a claim within the time prescribed by rule 63.11(2) will be deemed to have abandoned the reference or application.

(4) A party may apply to the Comptroller or the court to extend the period for starting a claim prescribed by rule 63.11(2) even where the application is made after expiration of that period.

#### **Application by employee for compensation**

**63.12.**—(1) An application by an employee for compensation under section 40(1) or (2) of the 1977 Act must be made—

- (a) in a claim form; and
- (b) within the period prescribed by paragraphs (2), (3) and (4).

(2) The prescribed period begins on the date of the grant of the patent and ends 1 year after the patent has ceased to have effect.

(3) Where the patent has ceased to have effect as a result of failure to pay renewal fees, the prescribed period continues as if the patent has remained continuously in effect provided that—

- (a) the renewal fee and any additional fee are paid in accordance with section 25(4) of the 1977 Act; or
- (b) restoration is ordered by the Comptroller following an application under section 28 of the 1977 Act.

(4) Where restoration is refused by the Comptroller following an application under section 28 of the 1977 Act, the prescribed period will end 1 year after the patent has ceased to have effect or 6 months after the date of refusal, whichever is the later.

## *II REGISTERED TRADE MARKS AND OTHER INTELLECTUAL PROPERTY RIGHTS*

### **Allocation**

**63.13.** Claims relating to matters arising out of the 1994 Act and other intellectual property rights set out in the practice direction must be started in—

- (a) the Chancery Division;
- (b) a patents county court; or
- (c) save as set out in the practice direction, a county court where there is also a Chancery District Registry.

## *III SERVICE OF DOCUMENTS AND PARTICIPATION BY THE COMPTROLLER*

### **Service of documents**

**63.14.**—(1) Subject to paragraph (2), Part 6 applies to service of a claim form and any document in any proceedings under this Part.

(2) A claim form relating to a registered right may be served—

- (a) on a party who has registered the right at the address for service given for that right in the United Kingdom Patent Office register, provided the address is within the United Kingdom; or
- (b) in accordance with rule 6.32(1), 6.33(1) or 6.33(2) on a party who has registered the right at the address for service given for that right in the appropriate register at—
  - (i) the United Kingdom Patent Office; or
  - (ii) the Office for Harmonisation in the Internal Market.

(3) Where a party seeks any remedy (whether by claim form, counterclaim or application notice), which would if granted affect an entry in any United Kingdom Patent Office register, that party must serve on the Comptroller or registrar—

- (a) the claim form, counterclaim or application notice;
- (b) any other statement of case where relevant (including any amended statement of case); and
- (c) any accompanying documents.

### **Participation by the Comptroller**

**63.15.** Where the documents set out in rule 63.14(3) are served, the Comptroller or registrar—

- (a) may take part in proceedings; and
- (b) need not serve a defence or other statement of case unless the court orders otherwise.

## IV APPEALS

### Appeals from decisions of the Comptroller or the registrar

- 63.16.**—(1) Part 52 applies to appeals from decisions of the Comptroller and the registrar.
- (2) Appeals about patents must be made to the Patents Court, and other appeals to the Chancery Division.
- (3) Where Part 52 requires a document to be served, it must also be served on the Comptroller or registrar, as appropriate.”

## SCHEDULE 2

Rule 13(d)

### “VI Drinking Banning Orders under the Violent Crime Reduction Act 2006(24)

#### Scope of this Section and interpretation

- 65.31.**—(1) This Section applies to applications in proceedings in a county court under sub-sections (2), (3) or (5) of section 4 of the Violent Crime Reduction Act 2006 by a relevant authority, and to applications for interim orders under section 9 of that Act.
- (2) In this Section—
- (a) “the 2006 Act” means the Violent Crime Reduction Act 2006;
  - (b) “relevant authority” has the same meaning as in section 14(1) of the 2006 Act; and
  - (c) “the principal proceedings” means any proceedings in a county court.

#### Application where the relevant authority is a party in principal proceedings

- 65.32.**—(1) Subject to paragraph (2)—
- (a) where the relevant authority is the claimant in the principal proceedings, an application under section 4(2) of the 2006 Act for an order under section 4(7) of the 2006 Act must be made in the claim form; and
  - (b) where the relevant authority is a defendant in the principal proceedings, an application for an order must be made by application notice which must be filed with the defence.
- (2) Where the relevant authority becomes aware of the circumstances that lead it to apply for an order after its claim is issued or its defence filed, the application must be made by application notice as soon as possible thereafter.
- (3) Where the application is made by application notice, it should normally be made on notice to the person against whom the order is sought.

#### Application where the relevant authority is not a party in principal proceedings

- 65.33.**—(1) Where the relevant authority is not a party to the principal proceedings—
- (a) an application under section 4(3) of the 2006 Act to be made a party must be made in accordance with Section I of Part 19; and

- (b) the application to be made a party and the application for an order under section 4(7) of the 2006 Act must be made in the same application notice.
- (2) The applications—
  - (a) must be made as soon as possible after the relevant authority becomes aware of the principal proceedings; and
  - (b) should normally be made on notice to the person against whom the order is sought.

#### **Application by a relevant authority to join a person to the principal proceedings**

**65.34.**—(1) An application under section 4(5) of the 2006 Act by a relevant authority which is a party to the principal proceedings to join a person to the principal proceedings must be made—

- (a) in accordance with Section I of Part 19;
  - (b) in the same application notice as the application for an order under section 4(7) of the 2006 Act against the person; and
  - (c) as soon as possible after the relevant authority considers that the criteria in section 4(4) of the 2006 Act are met.
- (2) The application notice must contain—
- (a) the relevant authority’s reasons for claiming that the person’s conduct is material in relation to the principal proceedings; and
  - (b) details of the conduct alleged.
- (3) The application should normally be made on notice to the person against whom the order is sought.

#### **Evidence**

**65.35.** An application for an order under section 4(7) of the 2006 Act must be accompanied by written evidence, which must include evidence that section 4(6) of the 2006 Act has been complied with.

#### **Application for an interim order**

**65.36.**—(1) An application for an interim order under section 9 of the 2006 Act must be made in accordance with Part 25.

- (2) The application should normally be made—
  - (a) in the claim form or application notice seeking the order; and
  - (b) on notice to the person against whom the order is sought.
- (3) An application for an interim order may be—
  - (a) made without a copy of the application notice being served on the person against whom the order is sought;
  - (b) heard in the absence of the person against whom the order is sought,with the permission of the court.”

## EXPLANATORY NOTE

*(This note is not part of these Rules)*

These Rules amend the Civil Procedure Rules 1998 in that they—

- amend rules 6.3, 6.20, 49 and 74.6 as a consequence of the remaining provisions of the Companies Act 2006 (c. 46) being brought into force;
- amend rules 6.52, 34.19, 43.2, 47.4, 52.16, 74.15, 74.25, RSC Order 46 rule 6, RSC Order 79 rule 9, RSC Order 109 rules 1, 3 and 4 and CCR Order 1 rule 6 by changing references to the Supreme Court, the House of Lords and related references following the establishment of the Supreme Court of the United Kingdom and the abolition of the appellate jurisdiction of the House of Lords by the Constitutional Reform Act 2005 (c. 4);
- amend Part 35 by—
  - providing a new definition of ‘expert’ and defining a ‘single joint expert’;
  - providing, in small claims track or fast track cases, that permission will normally only be given to call expert evidence on a particular issue from one expert (rule 35.4(3A));
  - making provision for written questions to experts to be proportionate; and
  - making consequential amendments;
- amend Part 44 to make it clear that in relation to publication cases (defamation and similar cases) insurance premiums for what is commonly known as an after-the-event (“ATE”) insurance policy cannot be recovered for any period if the information about the insurance policy required elsewhere was not given as so required, and to provide that an ATE insurance premium cannot be recovered in costs-only proceedings by a party if an admission of liability leading to settlement was made by the other party within 42 days of being given the required information;
- amend rule 55.10 so that a claimant in possession proceedings must send a notice to the property addressed to the “tenant or the occupier”, and must notify the local authority within which the property is located of the possession proceedings;
- substitute a new Part 63 (Intellectual Property Claims);
- re-insert Section IV of Part 65 concerning Drinking Banning Orders under the Violent Crime Reduction Act 2006 (c. 38).
- amend Part 68 in relation to a reference to the European Court and a request by the court that a preliminary ruling be dealt with under the European Court’s urgent preliminary ruling procedure;
- amend rule 76.10(2)(b) to reflect the amendment to section 3(7) of and the insertion of section 3(7A) into the Prevention of Terrorism Act 2005 (c. 2) by section 80 of the Counter-Terrorism Act 2008 (c. 28);
- amend rule 76.19 as a consequence of paragraph 5(4) of the Schedule to the Prevention of Terrorism Act 2005 as inserted by section 81(3) of the Counter-Terrorism Act 2008;
- amend rule 76.26 by inserting a new paragraph (5A) to provide that a special advocate is entitled to adduce evidence and to cross-examine witnesses and make a small consequential amendment to rule 76.24(b);

- amend rule 79.22 by inserting a new paragraph (4A) for consistency with the insertion of a new paragraph (5A) into rule 76.26; and
- insert a new Section 5 into Part 79 to provide for applications for notification orders as a result of the provisions of Schedule 4 to the Counter-Terrorism Act 2008 with consequential amendments to the heading to Part 79, the table of contents in Part 79 and rules 79.1(1), 79.15, 79.17(1), 79.18(1) and (3), 79.22(1) and (2), 79.23(1)(a), (3) and (4), 79.28(1), 79.29(1) and 79.30.