Patents Act 1977

1977 CHAPTER 37

PART I

NEW DOMESTIC LAW

Licences of right and compulsory licences

46 Patentee's application for entry in register that licences are available as of right.

(1) At any time after the grant of a patent its proprietor may apply to the comptroller for an entry to be made in the register to the effect that licences under the patent are to be available as of right.

(2) Where such an application is made, the comptroller shall give notice of the application to any person registered as having a right in or under the patent and, if satisfied that the proprietor of the patent is not precluded by contract from granting licences under the patent, shall make that entry.

(3) Where such an entry is made in respect of a patent—

(a) any person shall, at any time after the entry is made, be entitled as of right to a licence under the patent on such terms as may be settled by agreement or, in default of agreement, by the comptroller on the application of the proprietor of the patent or the person requiring the licence;

(b) the comptroller may, on the application of the holder of any licence granted under the patent before the entry was made, order the licence to be exchanged for a licence of right on terms so settled;

(c) if in proceedings for infringement of the patent (otherwise than by the importation of any article **[**[F1]from a country which is not a member State of the European Economic Community**]**) the defendant or defender undertakes to take a licence on such terms, no injunction or interdict shall be granted against him and the amount (if any) recoverable against him by way of damages shall not exceed double the amount which would have been payable by him as licensee if such a licence on those terms had been granted before the earliest infringement;

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[[F2](d) if the expiry date in relation to a renewal fee falls after the date of the entry, that fee shall be half the fee which would be payable had the entry not been made.**]**

[[F3](3A) An undertaking under subsection (3)(c) above may be given at any time before final order in the proceedings, without any admission of liability.**]**

[[F4](3B) For the purposes of subsection (3)(d) above the expiry date in relation to a renewal fee is the day at the end of which, by virtue of section 25(3) above, the patent in question ceases to have effect if that fee is not paid.**]**

(4) The licensee under a licence of right may (unless, in the case of a licence the terms of which are settled by agreement, the licence otherwise expressly provides) request the proprietor of the patent to take proceedings to prevent any infringement of the patent; and if the proprietor refuses or neglects to do so within two months after being so requested, the licensee may institute proceedings for the infringement in his own name as if he were proprietor, making the proprietor a defendant or defender.

(5) A proprietor so added as defendant or defender shall not be liable for any costs or expenses unless he enters an appearance and takes part in the proceedings.

Textual Amendments

F1 Words inserted by Copyright, Designs and Patents Act 1988 (c. 48, SIF 67A), s. 295, **Sch. 5 para. 12(2)**

F2 S. 46(3)(d) substituted (1.10.2005) by Patents Act 2004 (c. 16), **ss. 8(4)(a)**, 17(1); S.I. 2005/2471, art. 2(a)

F3 S. 46(3A) inserted by Copyright, Designs and Patents Act 1988 (c. 48, SIF 67A), s. 295, **Sch. 5 para. 12(3)**

F4 S. 46(3B) inserted (1.10.2005) by Patents Act 2004 (c. 16), **ss. 8(4)(b)**, 17(1); S.I. 2005/2471, art. 2(a)

47 Cancellation of entry made under s. 46.

(1) At any time after an entry has been made under section 46 above in respect of a patent, the proprietor of the patent may apply to the comptroller for cancellation of the entry.

(2) Where such an application is made and the balance paid of all renewal fees which would have been payable if the entry had not been made, the comptroller may cancel the entry, if satisfied that there is no existing licence under the patent or that all licensees under the patent consent to the application.

(3) Within the prescribed period after an entry has been made under section 46 above in respect of a patent, any person who claims that the proprietor of the patent is, and was at the time of the entry, precluded by a contract in which the claimant is interested from granting licences under the patent may apply to the comptroller for cancellation of the entry.

(4) Where the comptroller is satisfied, on an application under subsection (3) above, that the proprietor of the patent is and was so precluded, he shall cancel the entry; and the proprietor shall then be liable to pay, within a period specified by the comptroller, a sum equal to the balance of all renewal fees which would have been payable if the entry had not been made, and the patent shall cease to have effect at the expiration of that period if that sum is not so paid.

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(5) Where an entry is cancelled under this section, the rights and liabilities of the proprietor of the patent shall afterwards be the same as if the entry had not been made.

(6) Where an application has been made under this section, then—

(a) in the case of an application under subsection (1) above, any person, and

(b) in the case of an application under subsection (3) above, the proprietor of the patent,

may within the prescribed period give notice to the comptroller of opposition to the cancellation; and the comptroller shall, in considering the application, determine whether the opposition is justified.

[48 [F5]Compulsory licences: general.

(1) At any time after the expiration of three years, or of such other period as may be prescribed, from the date of the grant of a patent, any person may apply to the comptroller on one or more of the relevant grounds–

(a) for a licence under the patent;

(b) for an entry to be made in the register to the effect that licences under the patent are to be available as of right; or

(c) where the applicant is a government department, for the grant to any person specified in the application of a licence under the patent.

(2) Subject to sections 48A and 48B below, if he is satisfied that any of the relevant grounds are established, the comptroller may–

(a) where the application is under subsection (1)(a) above, order the grant of a licence to the applicant on such terms as the comptroller thinks fit;

(b) where the application is under subsection (1)(b) above, make such an entry as is there mentioned;

(c) where the application is under subsection (1)(c) above, order the grant of a licence to the person specified in the application on such terms as the comptroller thinks fit.

(3) An application may be made under this section in respect of a patent even though the applicant is already the holder of a licence under the patent; and no person shall be estopped or barred from alleging any of the matters specified in the relevant grounds by reason of any admission made by him, whether in such a licence or otherwise, or by reason of his having accepted a licence.

(4) In this section “the relevant grounds” means–

(a) in the case of an application made in respect of a patent whose proprietor is a WTO proprietor, the grounds set out in section 48A(1) below;

(b) in any other case, the grounds set out in section 48B(1) below.

(5) A proprietor is a WTO proprietor for the purposes of this section and sections 48A, 48B, 50 and 52 below if–

(a) he is a national of, or is domiciled in, a country which is a member of the World Trade Organisation; or

(b) he has a real and effective industrial or commercial establishment in such a country.

(6) A rule prescribing any such other period under subsection (1) above shall not be made unless a draft of the rule has been laid before, and approved by resolution of, each House of Parliament.**]**

Textual Amendments

F5 S. 48 substituted (29.7.1999) by S.I. 1999/1899, **reg. 3**

[48A [F6]Compulsory licences: WTO proprietors.

(1) In the case of an application made under section 48 above in respect of a patent whose proprietor is a WTO proprietor, the relevant grounds are–

(a) where the patented invention is a product, that a demand in the United Kingdom for that product is not being met on reasonable terms;

(b) that by reason of the refusal of the proprietor of the patent concerned to grant a licence or licences on reasonable terms–

(i) the exploitation in the United Kingdom of any other patented invention which involves an important technical advance of considerable economic significance in relation to the invention for which the patent concerned was granted is prevented or hindered, or

(ii) the establishment or development of commercial or industrial activities in the United Kingdom is unfairly prejudiced;

(c) that by reason of conditions imposed by the proprietor of the patent concerned on the grant of licences under the patent, or on the disposal or use of the patented product or on the use of the patented process, the manufacture, use or disposal of materials not protected by the patent, or the establishment or development of commercial or industrial activities in the United Kingdom, is unfairly prejudiced.

(2) No order or entry shall be made under section 48 above in respect of a patent whose proprietor is a WTO proprietor unless–

(a) the applicant has made efforts to obtain a licence from the proprietor on reasonable commercial terms and conditions; and

(b) his efforts have not been successful within a reasonable period.

(3) No order or entry shall be so made if the patented invention is in the field of semi-conductor technology.

(4) No order or entry shall be made under section 48 above in respect of a patent on the ground mentioned in subsection (1)(b)(i) above unless the comptroller is satisfied that the proprietor of the patent for the other invention is able and willing to grant the proprietor of the patent concerned and his licensees a licence under the patent for the other invention on reasonable terms.

(5) A licence granted in pursuance of an order or entry so made shall not be assigned except to a person to whom the patent for the other invention is also assigned.

(6) A licence granted in pursuance of an order or entry made under section 48 above in respect of a patent whose proprietor is a WTO proprietor–

(a) shall not be exclusive;

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(b) shall not be assigned except to a person to whom there is also assigned the part of the enterprise that enjoys the use of the patented invention, or the part of the goodwill that belongs to that part;

(c) shall be predominantly for the supply of the market in the United Kingdom;

(d) shall include conditions entitling the proprietor of the patent concerned to remuneration adequate in the circumstances of the case, taking into account the economic value of the licence; and

(e) shall be limited in scope and in duration to the purpose for which the licence was granted.**]**

Textual Amendments

F6 S. 48A inserted (29.7.1999) by S.I. 1999/1899, **reg. 4**

[48B [F7]Compulsory licences: other cases.

(1) In the case of an application made under section 48 above in respect of a patent whose proprietor is not a WTO proprietor, the relevant grounds are–

(a) where the patented invention is capable of being commercially worked in the United Kingdom, that it is not being so worked or is not being so worked to the fullest extent that is reasonably practicable;

(b) where the patented invention is a product, that a demand for the product in the United Kingdom–

(i) is not being met on reasonable terms, or

(ii) is being met to a substantial extent by importation from a country which is not a member State;

(c) where the patented invention is capable of being commercially worked in the United Kingdom, that it is being prevented or hindered from being so worked–

(i) where the invention is a product, by the importation of the product from a country which is not a member State,

(ii) where the invention is a process, by the importation from such a country of a product obtained directly by means of the process or to which the process has been applied;

(d) that by reason of the refusal of the proprietor of the patent to grant a licence or licences on reasonable terms–

(i) a market for the export of any patented product made in the United Kingdom is not being supplied, or

(ii) the working or efficient working in the United Kingdom of any other patented invention which makes a substantial contribution to the art is prevented or hindered, or

(iii) the establishment or development of commercial or industrial activities in the United Kingdom is unfairly prejudiced;

(e) that by reason of conditions imposed by the proprietor of the patent on the grant of licences under the patent, or on the disposal or use of the patented product or on the use of the patented process, the manufacture, use or disposal of materials not protected by the patent, or the establishment or development of commercial or industrial activities in the United Kingdom, is unfairly prejudiced.

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(2) Where–

(a) an application is made on the ground that the patented invention is not being commercially worked in the United Kingdom or is not being so worked to the fullest extent that is reasonably practicable; and

(b) it appears to the comptroller that the time which has elapsed since the publication in the journal of a notice of the grant of the patent has for any reason been insufficient to enable the invention to be so worked,

he may by order adjourn the application for such period as will in his opinion give sufficient time for the invention to be so worked.

(3) No order or entry shall be made under section 48 above in respect of a patent on the ground mentioned in subsection (1)(a) above if–

(a) the patented invention is being commercially worked in a country which is a member State; and

(b) demand in the United Kingdom is being met by importation from that country.

(4) No entry shall be made in the register under section 48 above on the ground mentioned in subsection (1)(d)(i) above, and any licence granted under section 48 above on that ground shall contain such provisions as appear to the comptroller to be expedient for restricting the countries in which any product concerned may be disposed of or used by the licensee.

(5) No order or entry shall be made under section 48 above in respect of a patent on the ground mentioned in subsection (1)(d)(ii) above unless the comptroller is satisfied that the proprietor of the patent for the other invention is able and willing to grant to the proprietor of the patent concerned and his licensees a licence under the patent for the other invention on reasonable terms.**]**

Textual Amendments

F7 S. 48B inserted (29.7.1999) by S.I. 1999/1899, **reg. 5**

49 Provisions about licences under s. 48.

(1) Where the comptroller is satisfied, on an application made under section 48 above in respect of a patent, that the manufacture, use or disposal of materials not protected by the patent is unfairly prejudiced by reason of conditions imposed by the proprietor of the patent on the grant of licences under the patent, or on the disposal or use of the patented product or the use of the patented process, he may (subject to the provisions of that section) order the grant of licences under the patent to such customers of the applicant as he thinks fit as well as to the applicant.

(2) Where an application under section 48 above is made in respect of a patent by a person who holds a licence under the patent, the comptroller—

(a) may, if he orders the grant of a licence to the applicant, order the existing licence to be cancelled, or

(b) may, instead of ordering the grant of a licence to the applicant, order the existing licence to be amended.

(3) **F8**

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(4) Section 46(4) and (5) above shall apply to a licence granted in pursuance of an order under section 48 above and to a licence granted by virtue of an entry under that section as it applies to a licence granted by virtue of an entry under section 46 above.

Textual Amendments

F8 S. 49(3) repealed by Copyright, Designs and Patents Act 1988 (c. 48, SIF 67A), ss. 295, 303(2), Sch. 5 para. 13, **Sch. 8**

50 Exercise of powers on applications under s. 48.

(1) The powers of the comptroller on an application under section 48 above in respect of a patent **[**[F9]whose proprietor is not a WTO proprietor**]** shall be exercised with a view to securing the following general purposes:—

(a) that inventions which can be worked on a commercial scale in the United Kingdom and which should in the public interest be so worked shall be worked there without undue delay and to the fullest extent that is reasonably practicable;

(b) that the inventor or other person beneficially entitled to a patent shall receive reasonable remuneration having regard to the nature of the invention;

(c) that the interests of any person for the time being working or developing an invention in the United Kingdom under the protection of a patent shall not be unfairly prejudiced.

(2) Subject to subsection (1) above, the comptroller shall, in determining whether to make an order or entry in pursuance of **[**[F10]any application under section 48 above**]**, take account of the following matters, that is to say—

(a) the nature of the invention, the time which has elapsed since the publication in the journal of a notice of the grant of the patent and the measures already taken by the proprietor of the patent or any licensee to make full use of the invention;

(b) the ability of any person to whom a licence would be granted under the order concerned to work the invention to the public advantage; and

(c) the risks to be undertaken by that person in providing capital and working the invention if the application for an order is granted,

but shall not be required to take account of matters subsequent to the making of the application.

Textual Amendments

F9 Words in s. 50(1) inserted (29.7.1999) by S.I. 1999/1899, **reg. 7(2)**

F10 Words in s. 50(2) substituted (29.7.1999) by S.I. 1999/1899, **reg. 7(3)**

[[F11]50A Powers exercisable following merger and market investigations

(1) Subsection (2) below applies where—

(a) section 41(2), 55(2), 66(6), 75(2), 83(2), 138(2), 147(2) **[**[F12], 147A(2)**]** or 160(2) of, or paragraph 5(2) or 10(2) of Schedule 7 to, the Enterprise Act 2002

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(powers to take remedial action following merger or market investigations) applies;

(b) the **[**[F13]Competition and Markets Authority**]** or (as the case may be) the Secretary of State considers that it would be appropriate to make an application under this section for the purpose of remedying, mitigating or preventing a matter which cannot be dealt with under the enactment concerned; and

(c) the matter concerned involves—

(i) conditions in licences granted under a patent by its proprietor restricting the use of the invention by the licensee or the right of the proprietor to grant other licences; or

(ii) a refusal by the proprietor of a patent to grant licences on reasonable terms.

(2) The **[**[F14]Competition and Markets Authority**]** or (as the case may be) the Secretary of State may apply to the comptroller to take action under this section.

(3) Before making an application the **[**[F14]Competition and Markets Authority**]** or (as the case may be) the Secretary of State shall publish, in such manner as it or he thinks appropriate, a notice describing the nature of the proposed application and shall consider any representations which may be made within 30 days of such publication by persons whose interests appear to it or him to be affected.

(4) The comptroller may, if it appears to him on an application under this section that the application is made in accordance with this section, by order cancel or modify any condition concerned of the kind mentioned in subsection (1)(c)(i) above or may, instead or in addition, make an entry in the register to the effect that licences under the patent are to be available as of right.

[[F15](5) References in this section to the Competition and Markets Authority are references to a CMA group except where—

(a) section 75(2) of the Enterprise Act 2002 applies; or

(b) any other enactment mentioned in subsection (1)(a) above applies and the functions of the Competition and Markets Authority under that enactment are being performed by the CMA Board by virtue of section 34C(3) or 133A(2) of the Enterprise Act 2002.**]**

(6) References in section 35, 36, 47, 63, 134 **[**[F16], 141 or 141A**]** of the Enterprise Act 2002 (questions to be decided by the **[**[F17]Competition and Markets Authority**]** in its reports) to taking action under section 41(2), 55, 66, 138 **[**[F18], 147 or 147A**]** shall include references to taking action under subsection (2) above.

(7) Action taken by virtue of subsection (4) above in consequence of an application under subsection (2) above where an enactment mentioned in subsection (1)(a) above applies shall be treated, for the purposes of sections 91(3), 92(1)(a), 162(1) and 166(3) of the Enterprise Act 2002 (duties to register and keep under review enforcement orders etc.), as if it were the making of an enforcement order (within the meaning of the Part concerned) under the relevant power in Part 3 or (as the case may be) 4 of that Act.

[In subsection (5) "CMA Board" and "CMA group" have the same meaning as in [F19](8) Schedule 4 to the Enterprise and Regulatory Reform Act 2013.**]]**

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Textual Amendments

F11 S. 50A inserted (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 8(2)**; S.I. 2003/1397, art. 2(1), Sch. (with arts. 8, 12)

F12 Word in s. 50A(1)(a) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 32(2)** (with art. 3)

F13 Words in s. 50A(1)(b) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 32(3)** (with art. 3)

F14 Words in s. 50A(2)(3) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 32(3)** (with art. 3)

F15 S. 50A(5) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 32(4)** (with art. 3)

F16 Words in s. 50A(6) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 32(5)(a)** (with art. 3)

F17 Words in s. 50A(6) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 32(5)(b)** (with art. 3)

F18 Words in s. 50A(6) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 32(5)(c)** (with art. 3)

F19 S. 50A(8) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 32(6)** (with art. 3)

Modifications etc. (not altering text)

C1 S. 50A(1)(a) amended (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), art. 1(1), **Sch. 4 para. 3(1)(a)**

C2 S. 50A(1)(a) amended (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), art. 1(1), **Sch. 4 para. 3(1)(b)**

C3 S. 50A(6) amended (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), art. 1(1), **Sch. 4 para. 3(1)(c)**

C4 S. 50A(6) amended (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), art. 1(1), **Sch. 4 para. 3(1)(d)**

C5 S. 50A(7) amended (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), art. 1(1), **Sch. 4 para. 3(1)(e)**

[F20 51 Powers exercisable in consequence of report of [F21 Competition and Markets Authority].

(1) Where a report of the [F22 Competition and Markets Authority] has been laid before Parliament containing conclusions to the effect—

F23 (a) . . . . . .

F23 (b) . . . . . .

(c) on a competition reference, that a person was engaged in an anti-competitive practice which operated or may be expected to operate against the public interest, or

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(d) on a reference under section 11 of the Competition Act 1980 (reference of public bodies and certain other persons), that a person is pursuing a course of conduct which operates against the public interest,

the appropriate Minister or Ministers may apply to the comptroller to take action under this section.

(2) Before making an application the appropriate Minister or Ministers shall publish, in such manner as he or they think appropriate, a notice describing the nature of the proposed application and shall consider any representations which may be made within 30 days of such publication by persons whose interests appear to him or them to be affected.

(3) If on an application under this section it appears to the comptroller that the matters specified in the **[**[F24]Competition and Markets Authority's report as being those which in the opinion of the Competition and Markets Authority**]** operate, or operated or may be expected to operate, against the public interest include—

(a) conditions in licences granted under a patent by its proprietor restricting the use of the invention by the licensee or the right of the proprietor to grant other licences, or

(b) a refusal by the proprietor of a patent to grant licences on reasonable terms

he may by order cancel or modify any such condition or may, instead or in addition, make an entry in the register to the effect that licences under the patent are to be available as of right.

(4) In this section "the appropriate Minister or Ministers"means the Minister or Ministers to whom the report of the **[**[F25]Competition and Markets Authority**]** was made.**]**

Textual Amendments

F20 S. 51 substituted by Copyright, Designs and Patents Act 1988 (c. 48, SIF 67A), s. 295, **Sch. 5 para. 14**

F21 Words in s. 51 heading substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 33(5)** (with art. 3)

F22 Words in s. 51(1) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 33(2)** (with art. 3)

F23 S. 51(1)(a)(b) repealed (20.6.2003 for specified purposes and 29.12.2004 in so far as not already in force) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 8(3), **Sch. 26**; S.I. 2003/1397, art. 2(1), Sch. (with arts. 3(1), 8, 12); S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)

F24 Words in s. 51(3) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 33(3)** (with art. 3)

F25 Words in s. 51(4) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 33(4)** (with art. 3)

[52 [F26]Opposition, appeal and arbitration.

(1) The proprietor of the patent concerned or any other person wishing to oppose an application under sections 48 to 51 above may, in accordance with rules, give to the comptroller notice of opposition; and the comptroller shall consider any opposition in deciding whether to grant the application.

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(2) Where an order or entry has been made under section 48 above in respect of a patent whose proprietor is a WTO proprietor–

(a) the proprietor or any other person may, in accordance with rules, apply to the comptroller to have the order revoked or the entry cancelled on the grounds that the circumstances which led to the making of the order or entry have ceased to exist and are unlikely to recur;

(b) any person wishing to oppose an application under paragraph (a) above may, in accordance with rules, give to the comptroller notice of opposition; and

(c) the comptroller shall consider any opposition in deciding whether to grant the application.

(3) If it appears to the comptroller on an application under subsection (2)(a) above that the circumstances which led to the making of the order or entry have ceased to exist and are unlikely to recur, he may–

(a) revoke the order or cancel the entry; and

(b) terminate any licence granted to a person in pursuance of the order or entry subject to such terms and conditions as he thinks necessary for the protection of the legitimate interests of that person.

(4) Where an appeal is brought–

(a) from an order made by the comptroller in pursuance of an application under sections 48 to 51 above;

(b) from a decision of his to make an entry in the register in pursuance of such an application;

(c) from a revocation or cancellation made by him under subsection (3) above; or

(d) from a refusal of his to make such an order, entry, revocation or cancellation,

the Attorney General, the appropriate Law Officer within the meaning of section 4A of the Crown Suits (Scotland) Act 1857 [F27] or the Attorney General for Northern Ireland, or **[**[F28]such other person who has a right of audience**]** as any of them may appoint, shall be entitled to appear and be heard.

(5) Where an application under sections 48 to 51 above or subsection (2) above is opposed, and either–

(a) the parties consent, or

(b) the proceedings require a prolonged examination of documents or any scientific or local investigation which cannot in the opinion of the comptroller conveniently be made before him,

the comptroller may at any time order the whole proceedings, or any question or issue of fact arising in them, to be referred to an arbitrator or arbiter agreed on by the parties or, in default of agreement, appointed by the comptroller.

(6) Where the whole proceedings are so referred, unless the parties otherwise agree before the award of the arbitrator or arbiter is made, an appeal shall lie from the award to the court.

(7) Where a question or issue of fact is so referred, the arbitrator or arbiter shall report his findings to the comptroller.**]**

Textual Amendments

F26 S. 52 substituted (29.7.1999) by S.I. 1999/1899, **reg. 6** (with transitional provisions in reg. 8(4))

F27 1857 c. 44.

F28 Words in s. 52(4) substituted (1.10.2014) by Intellectual Property Act 2014 (c. 18), s. 24(1), **Sch. para. 4(1)**; S.I. 2014/2330, art. 3, Sch.

53 Compulsory licences; supplementary provisions.

[F29](1) . . . . . .

(2) In any proceedings on an **[**[F30]application made under section 48 above in respect of a patent**]**, any statement with respect to any activity in relation to the patented invention, or with respect to the grant or refusal of licences under the patent, contained in a report of the **[**[F31]Competition and Markets Authority**]** laid before Parliament under Part VII of the [M1]Fair Trading Act 1973 **[**[F32]or section 17 of the Competition Act 1980**][**[F33] or published under Part 3 or 4 of the Enterprise Act 2002**]** shall be prima facie evidence of the matters stated, and in Scotland shall be sufficient evidence of those matters.

(3) The comptroller may make an entry in the register under sections 48 to 51 above notwithstanding any contract which would have precluded the entry on the application of the proprietor of the patent under section 46 above.

(4) An entry made in the register under sections 48 to 51 above shall for all purposes have the same effect as an entry made under section 46 above.

(5) No order or entry shall be made in pursuance of an application under sections 48 to 51 above which would be at variance with any treaty or international convention to which the United Kingdom is a party.

Textual Amendments

F29 S. 53(1) repealed (1.1.2005) by Patents Act 2004 (c. 16), s. 17(1), Sch. 2 para. 12, **Sch. 3**; S.I. 2004/3205, art. 2(g)(k) (with art. 9)

F30 Words substituted by Copyright, Designs and Patents Act 1988 (c. 48, SIF 67A), s. 295, **Sch. 5 para. 15(a)**

F31 Words in s. 53(2) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 34** (with art. 3)

F32 Words inserted by Copyright, Designs and Patents Act 1988 (c. 48, SIF 67A), s. 295, **Sch. 5 para. 15(b)**

F33 Words in s. 53(2) inserted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 8(4)**; S.I. 2003/1397, art. 2(1), Sch. (with arts. 812)

Modifications etc. (not altering text)

C6 S. 53(2) modified (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), art. 1(1), **Sch. 4 para. 3(2)** (as amended (1.4.2014) by S.I. 2014/891, arts. 1, 19(2) (with arts. 20-23))

Marginal Citations

M1 1973 c. 41.

Changes to legislation: *Patents Act 1977, Cross Heading: Licences of right and compulsory licences is up to date with all changes known to be in force on or before 22 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

54 Special provisions where patented invention is being worked abroad.

(1) Her Majesty may by Order in Council provide that the comptroller may not (otherwise than for purposes of the public interest) make an order or entry in respect of a patent in pursuance of an application under sections 48 to 51 above if the invention concerned is being commercially worked in any relevant country specified in the Order and demand in the United Kingdom for any patented product resulting from that working is being met by importation from that country.

(2) In subsection (1) above "relevant country" means a country other than a member state **[**[F34]or a member of the World Trade Organisation**]** whose law in the opinion of Her Majesty in Council incorporates or will incorporate provisions treating the working of an invention in, and importation from, the United Kingdom in a similar way to that in which the Order in Council would (if made) treat the working of an invention in, and and importation from, that country.

Textual Amendments

F34 Words in s. 54(2) inserted (29.7.1999) by S.I. 1999/1899, **reg. 7(4)**

Changes to legislation:
Patents Act 1977, Cross Heading: Licences of right and compulsory licences is up to date with all changes known to be in force on or before 22 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.
View outstanding changes

Changes and effects yet to be applied to :

– s. 50A heading words inserted by S.I. 2019/93, Sch. 1 para. B1(5) (as inserted) by S.I. 2019/1245 reg. 16 (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:
Whole provisions yet to be inserted into this Act (including any effects on those provisions):

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