



Patents Act 1977

1977 CHAPTER 37

PART I

NEW DOMESTIC LAW

Putting validity in issue

74 Proceedings in which validity of patent may be put in issue

- (1) Subject to the following provisions of this section, the validity of a patent may be put in issue—
 - (a) by way of defence, in proceedings for infringement of the patent under section 61 above or proceedings under section 69 above for infringement of rights conferred by the publication of an application ;
 - (b) in proceedings under section 70 above ;
 - (c) in proceedings in which a declaration in relation to the patent is sought under section 71 above ;
 - (d) in proceedings before the court or the comptroller under section 72 above for the revocation of the patent;
 - (e) in proceedings under section 58 above.
- (2) The validity of a patent may not be put in issue in any other proceedings and, in particular, no proceedings may be instituted (whether under this Act or otherwise) seeking only a declaration as to the validity or invalidity of a patent.
- (3) The only grounds on which the validity of a patent may be put in issue (whether in proceedings for revocation under section 72 above or otherwise) are the grounds on which the patent may be revoked under that section.
- (4) No determination shall be made in any proceedings mentioned in subsection (1) above on the validity of a patent which any person puts in issue on the ground mentioned in section 72(1)(b) above unless—

Status: This is the original version (as it was originally enacted).

- (a) it has been determined in entitlement proceedings commenced by that person or in the proceedings in which the validity of the patent is in issue that the patent should have been granted to him and not some other person; and
 - (b) except where it has been so determined in entitlement proceedings, the proceedings in which the validity of the patent is in issue are commenced before the end of the period of two years beginning with the date of the grant of the patent or it is shown that any person registered as a proprietor of the patent knew at the time of the grant or of the transfer of the patent to him that he was not entitled to the patent.
- (5) Where the validity of a patent is put in issue by way of defence or counterclaim the court or the comptroller shall, if it or he thinks it just to do so, give the defendant an opportunity to comply with the condition in subsection (4)(a) above.
- (6) In subsection (4) above "entitlement proceedings", in relation to a patent, means a reference under section 37(1)(a) above on the ground that the patent was granted to a person not entitled to it or proceedings for a declaration or declarator that it was so granted.
- (7) Where proceedings with respect to a patent are pending in the court under any provision of this Act mentioned in subsection (1) above, no proceedings may be instituted without the leave of the court before the comptroller with respect to that patent under section 61(3), 69, 71 or 72 above.
- (8) It is hereby declared that for the purposes of this Act the validity of a patent is not put in issue merely because the comptroller is considering its validity in order to decide whether to revoke it under section 73 above.