



Patents Act 1977

1977 CHAPTER 37

PART I

NEW DOMESTIC LAW

Use of patented inventions for services of the Crown

55 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, for the services of the Crown and in accordance with this section, do any of the following acts in the United Kingdom in relation to a patented invention without the consent of the proprietor of the patent, that is to say—
- (a) where the invention is a product, may—
 - (i) make, use, import or keep the product, or sell or offer to sell it where to do so would be incidental or ancillary to making, using, importing or keeping it; or
 - (ii) in any event, sell or offer to sell it for foreign defence purposes or for the production or supply of specified drugs and medicines, or dispose or offer to dispose of it (otherwise than by selling it) for any purpose whatever;
 - (b) where the invention is a process, may use it or do in relation to any product obtained directly by means of the process anything mentioned in paragraph (a) above;
 - (c) without prejudice to the foregoing, where the invention or any product obtained directly by means of the invention is a specified drug or medicine, may sell or offer to sell the drug or medicine ;
 - (d) may supply or offer to supply to any person any of the means, relating to an essential element of the invention, for putting the invention into effect;
 - (e) may dispose or offer to dispose of anything which was made, used, imported or kept in the exercise of the powers conferred by this section and which is

Status: This is the original version (as it was originally enacted).

no longer required for the purpose for which it was made, used, imported or kept (as the case may be),

and anything done by virtue of this subsection shall not amount to an infringement of the patent concerned.

- (2) Any act done in relation to an invention by virtue of this section is in the following provisions of this section referred to as use of the invention ; and " use ", in relation to an invention, in sections 56 to 58 below shall be construed accordingly.
- (3) So far as the invention has before its priority date been duly recorded by or tried by or on behalf of a government department or the United Kingdom Atomic Energy Authority otherwise than in consequence of a relevant communication made in confidence, any use of the invention by virtue of this section may be made free of any royalty or other payment to the proprietor.
- (4) So far as the invention has not been so recorded or tried, any use of it made by virtue of this section at any time either—
 - (a) after the publication of the application for the patent for the invention; or
 - (b) without prejudice to paragraph (a) above, in consequence of a relevant communication made after the priority date of the invention otherwise than in confidence;shall be made on such terms as may be agreed either before or after the use by the government department and the proprietor of the patent with the approval of the Treasury or as may in default of agreement be determined by the court on a reference under section 58 below.
- (5) Where an invention is used by virtue of this section at any time after publication of an application for a patent for the invention but before such a patent is granted, and the terms for its use agreed or determined as mentioned in subsection (4) above include terms as to payment for the use, then (notwithstanding anything in those terms) any such payment shall be recoverable only—
 - (a) after such a patent is granted ; and
 - (b) if (apart from this section) the use would, if the patent had been granted on the date of the publication of the application, have infringed not only the patent but also the claims (as interpreted by the description and any drawings referred to in the description or claims) in the form in which they were contained in the application immediately before the preparations for its publication were completed by the Patent Office.
- (6) 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 use in respect of which the authority is given is made, and may be given to any person whether or not he is authorised directly or indirectly by the proprietor of the patent to do anything in relation to the invention.
- (7) 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 to do so, the department shall notify the proprietor of the patent as soon as practicable after the second of the following events, that is to say, the use is begun and the patent is granted, and furnish him with such information as to the extent of the use as he may from time to time require.

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

- (8) A person acquiring anything disposed of in the exercise of powers conferred by this section, and any person claiming through him, may deal with it in the same manner as if the patent were held on behalf of the Crown.
- (9) In this section " relevant communication ", in relation to an invention, means a communication of the invention directly or indirectly by the proprietor of the patent or any person from whom he derives title.
- (10) Subsection (4) above is without prejudice to any rule of law relating to the confidentiality of information.
- (11) In the application of this section to Northern Ireland, the reference in subsection (4) above to the Treasury shall, where the government department referred to in that subsection is a department of the Government of Northern Ireland, be construed as a reference to the Department of Finance for Northern Ireland.