



# Copyright, Designs and Patents Act 1988

## 1988 CHAPTER 48

### PART VI

#### PATENTS

##### *Licences of right in respect of certain patents*

#### **293 Restriction of acts authorised by certain licences**

In paragraph 4(2)(c) of Schedule 1 to the Patents Act 1977 (licences to be available as of right where term of existing patent extended), at the end insert “, but subject to paragraph 4A below”, and after that paragraph insert—

- “4A (1) If the proprietor of a patent for an invention which is a product files a declaration with the Patent Office in accordance with this paragraph, the licences to which persons are entitled by virtue of paragraph 4(2)(c) above shall not extend to a use of the product which is excepted by or under this paragraph.
- (2) Pharmaceutical use is excepted, that is—
- (a) use as a medicinal product within the meaning of the Medicines Act 1968, and
  - (b) the doing of any other act mentioned in section 60(1)(a) above with a view to such use.
- (3) The Secretary of State may by order except such other uses as he thinks fit; and an order may—
- (a) specify as an excepted use any act mentioned in section 60(1)(a) above, and
  - (b) make different provision with respect to acts done in different circumstances or for different purposes.
- (4) For the purposes of this paragraph the question what uses are excepted, so far as that depends on—

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*Status: This is the original version (as it was originally enacted).*

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- (a) orders under section 130 of the Medicines Act 1968 (meaning of “medicinal product”), or
  - (b) orders under sub-paragraph (3) above,
- shall be determined in relation to a patent at the beginning of the sixteenth year of the patent.
- (5) A declaration under this paragraph shall be in the prescribed form and shall be filed in the prescribed manner and within the prescribed time limits.
- (6) A declaration may not be filed—
- (a) in respect of a patent which has at the commencement of section 293 of the Copyright, Designs and Patents Act 1988 passed the end of its fifteenth year; or
  - (b) if at the date of filing there is—
    - (i) an existing licence for any description of excepted use of the product, or
    - (ii) an outstanding application under section 46(3)(a) or (b) above for the settlement by the comptroller of the terms of a licence for any description of excepted use of the product,
 and, in either case, the licence took or is to take effect at or after the end of the sixteenth year of the patent.
- (7) Where a declaration has been filed under this paragraph in respect of a patent—
- (a) section 46(3)(c) above (restriction of remedies for infringement where licences available as of right) does not apply to an infringement of the patent in so far as it consists of the excepted use of the product after the filing of the declaration; and
  - (b) section 46(3)(d) above (abatement of renewal fee if licences available as of right) does not apply to the patent.”.

## **294 When application may be made for settlement of terms of licence**

In Schedule 1 to the Patents Act 1977, after the paragraph inserted by section 293 above, insert—

- “4B (1) An application under section 46(3)(a) or (b) above for the settlement by the comptroller of the terms on which a person is entitled to a licence by virtue of paragraph 4(2)(c) above is ineffective if made before the beginning of the sixteenth year of the patent.
- (2) This paragraph applies to applications made after the commencement of section 294 of the Copyright, Designs and Patents Act 1988 and to any application made before the commencement of that section in respect of a patent which has not at the commencement of that section passed the end of its fifteenth year.”.