



Patents and Designs Act 1907

1907 CHAPTER 29

PART I

PATENTS

Miscellaneous

37 Grant of patents to two or more persons

Where, after the commencement of this Act, a patent is granted to two or more persons jointly, they shall, unless otherwise specified in the patent, be treated for the purpose of the devolution of the legal interest therein as joint tenants, but, subject to any contract to the contrary, each of such persons shall be entitled to use the invention for his own profit without accounting to the others, but shall not be entitled to grant a licence without their consent, and, if any such person dies, his beneficial interest in the patent shall devolve on his personal representatives as part of his personal estate.

38 Avoidance of certain conditions attached to the sale, &c, of patented articles

(1) It shall not be lawful in any contract made after the passing of this Act in relation to the sale or lease of, or licence to use or work, any article or process protected by a patent to insert a condition the effect of which will be—

- (a) to prohibit or restrict the purchaser, lessee, or licensee from using any article or class of articles, whether patented or not, or any patented process, supplied or owned by any person other than the seller, lessor, or licensor or his nominees ; or
- (b) to require the purchaser, lessee, or licensee to acquire from the seller, lessor, or licensor, or his nominees, any article or class of articles not protected by the patent ;

and any such condition shall be null and void, as being in restraint of trade and contrary to public policy.

Provided that this subsection shall not apply if—

- (i) the seller, lessor, or licensor proves that at the time the contract was entered into the purchaser, lessee, or licensee had the option of purchasing the article or obtaining a lease or licence on reasonable terms, without such conditions as aforesaid ; and
 - (ii) the contract entitles the purchaser, lessee, or licensee to relieve himself of his liability to observe any such condition on giving the other party three months' notice in writing and on payment in compensation for such relief in the case of a purchase of such sum, or in the case of a lease or licence of such rent or royalty for the residue of the term of the contract, as may be fixed by an arbitrator appointed by the Board of Trade.
- (2) Any contract relating to the lease of or licence to use or work any patented article or patented process, whether made before or after the passing of this Act, may at any time after the patent or all the patents by which the article or process was protected at the time of the making of the contract has or have ceased to be in force, and notwithstanding anything in the same or in any other contract to the contrary, be determined by either party on giving three months notice in writing to the other party ; but where any such notice is given determining any contract made before the passing of this Act, the party giving the notice shall be liable to pay such compensation as, failing agreement, may be awarded by an arbitrator appointed by the Board of Trade.
- (3) Any contract made before the passing of this Act relating to the lease of or licence to use or work any patented article or process and containing any condition which, had the contract been made after the passing of this Act, would by virtue of this section have been null and void may, at any time before the contract is determinable under the last preceding subsection, and notwithstanding anything in the same or any other contract to the contrary, be determined by either party on giving three months notice in writing to the other party, but where any such notice is given the party giving the notice shall be liable to pay such compensation as, failing agreement, may be awarded by an arbitrator appointed, by the Board of Trade.
- (4) The insertion by the patentee in a contract, made after the passing of this Act, of any condition which by virtue of this section is null and void shall be available as a defence to an action for infringement of the patent, to which the contract relates, brought while that contract is in force.
- (5) Nothing in this section shall—
 - (a) affect any condition in a contract whereby a person is prohibited from selling any goods other than those of a particular person ; or
 - (b) be construed as validating any contract which would, apart from this section, be invalid ; or
 - (c) affect any right of determining a contract or condition in a contract exerciseable independently of this section ; or
 - (d) affect any condition in a contract for the lease of or licence to use a patented article, whereby the lessor or licensor reserves to himself or his nominees the right to supply such new parts of the patented article as may be required to put or keep it in repair.

39 Costs and security for costs

- (1) The comptroller shall, in proceedings relating to an opposition to the grant of a patent or to an application for the amendment of a specification or the revocation of a patent, have power by order to award to any party such costs as he may consider reasonable,

and to direct how and by what parties they are to be paid, and any such order may be made a rule of the court.

- (2) If a party giving notice of opposition to the grant of a patent or to the amendment of a specification, or applying to the comptroller for the revocation of a patent, or giving notice of appeal from any decision of the comptroller, neither resides nor carries on business in the United Kingdom or the Isle of Man, the comptroller, or, in case of appeal to the law officer, the law officer, may require such party to give security for costs of the proceedings or appeal, and in default of such security being given may treat the proceedings or appeal as abandoned.

40 Procedure on appeal to law officer

The law officer may examine witnesses on oath and administer oaths for that purpose, and may make rules regulating references and appeals to the law officer and the practice and procedure before him under this Part of this Act; and in any proceeding before the law officer under this Part of this Act, the law officer may order costs to be paid by either party, and any such order may be made a rule of the court.

41 Provision as to anticipation

- (1) An invention, covered by any patent applied for on or after the first day of January one thousand nine hundred and five, shall not be deemed to have been anticipated by reason only of its publication in a specification left pursuant to an application made in the United Kingdom not less than fifty years before the date of the application for the patent, or of its publication in a provisional specification of any date not followed by a complete specification.
- (2) A patent shall not be held to be invalid by reason only of the invention in respect of which the patent was granted, or any part thereof, having been published prior to the date of the patent, if the patentee proves to the satisfaction of the court that the publication was made without his knowledge and consent, and that the matter published was derived or obtained from him, and, if he learnt of the publication before the date of his application for the patent, that he applied for and obtained protection for his invention with all reasonable diligence after learning of the publication.

42 Disconformity

A patent shall not be held to be invalid on the ground that the complete specification claims a further or different invention to that contained in the provisional, if the invention therein claimed, so far as it is not contained in the provisional, was novel at the date when the complete specification was put in, and the applicant was the first and true inventor thereof.

43 Patent on application of representative of deceased inventor

- (1) If the person claiming to be inventor of an invention dies without making an application for a patent for the invention, application may be made by, and a patent for the invention granted to, his legal representative.
- (2) Every such application must contain a declaration by the legal representative that he believes him to be the true and first inventor of the invention.

44 Loss or destruction of patent

If a patent is lost or destroyed, or its non-production is accounted for to the satisfaction of the comptroller, the comptroller may at any time seal a duplicate thereof.

45 Provisions as to exhibitions

- (1) The exhibition of an invention at an industrial or international exhibition, certified as such by the Board of Trade, or the publication of any description of the invention during the period of the holding of the exhibition, or the use of the invention for the purpose of the exhibition in the place where the exhibition is held, or the use of the invention during the period of the holding of the exhibition by any person elsewhere, without the privity or consent of the inventor, shall not prejudice the right of the inventor to apply for and obtain a patent in respect of the invention or the validity of any patent granted on the application, provided that—
 - (a) the exhibitor, before exhibiting the invention, gives the comptroller the prescribed notice of his intention to do so ; and
 - (b) the application for a patent is made before or within six months from the date of the opening of the exhibition.
- (2) His Majesty may by Order in Council apply this section to any exhibition mentioned in the Order in like manner as if it were an industrial or international exhibition certified as such by the Board of Trade, and any such Order may provide that the exhibitor shall be relieved from the condition of giving notice to the comptroller of his intention to exhibit, and shall be so relieved either absolutely or upon such terms and conditions as may be stated in the Order.

46 Publication of illustrated journal, indexes, &c

- (1) The comptroller shall issue periodically an illustrated journal of patented inventions, as well as reports of patent cases decided by courts of law, and any other information that he may deem generally useful or important.
- (2) Provision shall be made by the comptroller for keeping on sale copies of such journal, and also of all complete specifications of patents in force, with any accompanying drawings.
- (3) The comptroller shall continue, in such form as he deems expedient, the indexes and abridgments of specifications hitherto published, and shall prepare and publish such other indexes, abridgments of specifications, catalogues, and other works relating to inventions, as he thinks fit.

47 Patent Museum

- (1) The control and management of the Patent Museum and its contents shall remain vested in the Board of Education, subject to such directions as His Majesty in Council may think fit to give.
- (2) The Board of Education may at any time require a patentee to furnish them with a model of his invention on payment to the patentee of the cost of the manufacture of the model, the amount to be settled, in case of dispute, by the Board of Trade.

48 Foreign vessels in British waters

- (1) A patent shall not prevent the use of an invention for the purposes of the navigation of a foreign vessel within the jurisdiction of any of His Majesty's Courts in the United Kingdom, or Isle of Man, or the use of an invention in a foreign vessel within that jurisdiction, provided it is not used therein for or in connection with the manufacture or preparation of anything intended to be sold in or exported from the United Kingdom or Isle of Man.
- (2) This section shall not extend to vessels of any foreign state of which the laws do not confer corresponding rights with respect to the use of inventions in British vessels while in the ports of that state, or in the waters within the jurisdiction of its courts.