



# Patents and Designs Act 1907

## 1907 CHAPTER 29

### PART I

#### PATENTS

##### *Miscellaneous*

### **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.

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*Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.*

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- (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 exercisable 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.