



Patents Act 1977

1977 CHAPTER 37

PART I

NEW DOMESTIC LAW

Infringement

60 Meaning of infringement.

- (1) Subject to the provisions of this section, a person infringes a patent for an invention if, but only if, while the patent is in force, he does any of the following things in the United Kingdom in relation to the invention without the consent of the proprietor of the patent, that is to say—
 - (a) where the invention is a product, he makes, disposes of, offers to dispose of, uses or imports the product or keeps it whether for disposal or otherwise;
 - (b) where the invention is a process, he uses the process or he offers it for use in the United Kingdom when he knows, or it is obvious to a reasonable person in the circumstances, that its use there without the consent of the proprietor would be an infringement of the patent;
 - (c) where the invention is a process, he disposes of, offers to dispose of, uses or imports any product obtained directly by means of that process or keeps any such product whether for disposal or otherwise.
- (2) Subject to the following provisions of this section, a person (other than the proprietor of the patent) also infringes a patent for an invention if, while the patent is in force and without the consent of the proprietor, he supplies or offers to supply in the United Kingdom a person other than a licensee or other person entitled to work the invention with any of the means, relating to an essential element of the invention, for putting the invention into effect when he knows, or it is obvious to a reasonable person in the circumstances, that those means are suitable for putting, and are intended to put, the invention into effect in the United Kingdom.
- (3) Subsection (2) above shall not apply to the supply or offer of a staple commercial product unless the supply or the offer is made for the purpose of inducing the person

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supplied or, as the case may be, the person to whom the offer is made to do an act which constitutes an infringement of the patent by virtue of subsection (1) above.

^{F1}(4)

(5) An act which, apart from this subsection, would constitute an infringement of a patent for an invention shall not do so if—

- (a) it is done privately and for purposes which are not commercial;
- (b) it is done for experimental purposes relating to the subject-matter of the invention;
- (c) it consists of the extemporaneous preparation in a pharmacy of a medicine for an individual in accordance with a prescription given by a registered medical or dental practitioner or consists of dealing with a medicine so prepared;
- (d) it consists of the use, exclusively for the needs of a relevant ship, of a product or process in the body of such a ship or in its machinery, tackle, apparatus or other accessories, in a case where the ship has temporarily or accidentally entered the internal or territorial waters of the United Kingdom;
- (e) it consists of the use of a product or process in the body or operation of a relevant aircraft, hovercraft or vehicle which has temporarily or accidentally entered or is crossing the United Kingdom (including the air space above it and its territorial waters) or the use of accessories for such a relevant aircraft, hovercraft or vehicle;
- (f) it consists of the use of an exempted aircraft which has lawfully entered or is lawfully crossing the United Kingdom as aforesaid or of the importation into the United Kingdom, or the use or storage there, of any part or accessory for such an aircraft.

^{F2}(g) it consists of the use by a farmer of the product of his harvest for propagation or multiplication by him on his own holding, where there has been a sale of plant propagating material to the farmer by the proprietor of the patent or with his consent for agricultural use;

(h) it consists of the use of an animal or animal reproductive material by a farmer for an agricultural purpose following a sale to the farmer, by the proprietor of the patent or with his consent, of breeding stock or other animal reproductive material which constitutes or contains the patented invention.]

^{F3}(i) it consists of—

- (i) an act done in conducting a study, test or trial which is necessary for and is conducted with a view to the application of paragraphs 1 to 5 of article 13 of Directive [2001/82/EC](#) or paragraphs 1 to 4 of article 10 of Directive [2001/83/EC](#), or

(ii) any other act which is required for the purpose of the application of those paragraphs.]

(6) For the purposes of subsection (2) above a person who does an act in relation to an invention which is prevented only by virtue of paragraph (a), (b) or (c) of subsection (5) above from constituting an infringement of a patent for the invention shall not be treated as a person entitled to work the invention, but—

- (a) the reference in that subsection to a person entitled to work an invention includes a reference to a person so entitled by virtue of section 55 above, and
- (b) a person who by virtue of ^{F4}section 20B(4) or (5) above or ^{F5}section 28A(4) or (5) above or section 64 below ^{F6}or section 117A(4) or (5) below] is entitled to do an act in relation to the invention without it constituting such an

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infringement shall, so far as concerns that act, be treated as a person entitled to work the invention.

[^{F7}(6A) Schedule A1 contains—

- (a) provisions restricting the circumstances in which subsection (5)(g) applies; and
- (b) provisions which apply where an act would constitute an infringement of a patent but for subsection (5)(g).

(6B) For the purposes of subsection (5)(h), use for an agricultural purpose—

- (a) includes making an animal or animal reproductive material available for the purposes of pursuing the farmer's agricultural activity; but
- (b) does not include sale within the framework, or for the purposes, of a commercial reproduction activity.

(6C) In paragraphs (g) and (h) of subsection (5) “sale” includes any other form of commercialisation.]

[^{F8}(6D) For the purposes of subsection (5)(b), anything done in or for the purposes of a medicinal product assessment which would otherwise constitute an infringement of a patent for an invention is to be regarded as done for experimental purposes relating to the subject-matter of the invention.

(6E) In subsection (6D), “medicinal product assessment” means any testing, course of testing or other activity undertaken with a view to providing data for any of the following purposes—

- (a) obtaining or varying an authorisation to sell or supply, or offer to sell or supply, a medicinal product (whether in the United Kingdom or elsewhere);
- (b) complying with any regulatory requirement imposed (whether in the United Kingdom or elsewhere) in relation to such an authorisation;
- (c) enabling a government or public authority (whether in the United Kingdom or elsewhere), or a person (whether in the United Kingdom or elsewhere) with functions of—
 - (i) providing health care on behalf of such a government or public authority, or
 - (ii) providing advice to, or on behalf of, such a government or public authority about the provision of health care,

to carry out an assessment of suitability of a medicinal product for human use for the purpose of determining whether to use it, or recommend its use, in the provision of health care.

(6F) In subsection (6E) and this subsection—

“medicinal product” means a medicinal product for human use or a veterinary medicinal product;

“medicinal product for human use” has the meaning given by article 1 of [Directive 2001/83/EC](#);

“veterinary medicinal product” has the meaning given by article 1 of [Directive 2001/82/EC](#).

(6G) Nothing in subsections (6D) to (6F) is to be read as affecting the application of subsection (5)(b) in relation to any act of a kind not falling within subsection (6D).]

(7) In this section—

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“relevant ship” and “relevant aircraft, hovercraft or vehicle” mean respectively a ship and an aircraft, hovercraft or vehicle registered in, or belonging to, any country, other than the United Kingdom, which is a party to the Convention for the Protection of Industrial Property signed at Paris on 20th March 1883 [^{F9}or which is a member of the World Trade Organisation]; and

“exempted aircraft” means an aircraft to which [^{F10}section 89 of the Civil Aviation Act 1982] section 53 of the ^{M1}Civil Aviation Act 1949 (aircraft exempted from seizure in respect of patent claims) applies.

[^{F11}“Directive 2001/82/EC” means Directive 2001/82/EC of the European Parliament and of the Council on the Community code relating to veterinary medicinal products as amended by [^{F12}Directive 2004/28/EC] of the European Parliament and of the Council;

“Directive 2001/83/EC” means Directive 2001/83/EC of the European Parliament and of the Council on the Community code relating to medicinal products for human use, as amended by Directive 2002/98/EC of the European Parliament and of the Council, by Commission Directive 2003/63/EC and by Directives 2004/24/EC and 2004/27/EC of the European Parliament and of the Council]

Textual Amendments

- F1** S. 60(4) repealed (1.1.2005) by Patents Act 2004 (c. 16), s. 17(1), Sch. 2 para. 13, **Sch. 3**; S.I. 2004/3205, art. 2(g)(k) (with art. 9)
- F2** S. 60(5)(g)(h) inserted (28.7.2000) by S.I. 2000/2037, **reg. 4(a)**
- F3** S. 60(5)(i) inserted (30.10.2005) by Medicines (Marketing Authorisations Etc.) Amendment Regulations 2005 (S.I. 2005/2759), regs. 1(a), **3(a)**
- F4** Words in s. 60(6)(b) inserted (1.1.2005) by The Regulatory Reform (Patents) Order 2004 (S.I. 2004/2357), arts. 1(2), **11(a)** (with arts. 20-23)
- F5** Words substituted by Copyright, Designs and Patents Act 1988 (c. 48, SIF 67A), s. 295, **Sch. 5 para. 8(a)**
- F6** Words in s. 60(6)(b) inserted (1.1.2005) by The Regulatory Reform (Patents) Order 2004 (S.I. 2004/2357), arts. 1(2), **11(b)** (with arts. 20-23)
- F7** S. 60(6A)(6B)(6C) inserted (28.7.2000) by S.I. 2000/2037, **reg. 4(b)**
- F8** S. 60(6D)-(6G) inserted (1.10.2014) by The Legislative Reform (Patents) Order 2014 (S.I. 2014/1997), arts. 1(2), **2**
- F9** Words in s. 60(7) in the definition of “relevant ship” and “relevant aircraft, hovercraft or vehicle” inserted (29.7.1999) by virtue of S.I. 1999/1899, **reg. 7**
- F10** Words substituted by Civil Aviation Act 1982 (c. 16, SIF 9), s. 109, **Sch. 15 para. 19**
- F11** Words in s. 60(7) inserted (30.10.2005) by Medicines (Marketing Authorisations Etc.) Amendment Regulations 2005 (S.I. 2005/2759), regs. 1(a), **3(b)**
- F12** Words in s. 60(7) substituted (1.10.2014) by Intellectual Property Act 2014 (c. 18), s. 24(1), **Sch. para. 5**; S.I. 2014/2330, art. 3, Sch.

Marginal Citations

- M1** 1949 c. 67.

61 Proceedings for infringement of patent.

- (1) Subject to the following provisions of this Part of this Act, civil proceedings may be brought in the court by the proprietor of a patent in respect of any act alleged to

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- infringe the patent and (without prejudice to any other jurisdiction of the court) in those proceedings a claim may be made—
- (a) for an injunction or interdict restraining the defendant or defender from any apprehended act of infringement;
 - (b) for an order for him to deliver up or destroy any patented product in relation to which the patent is infringed or any article in which that product is inextricably comprised;
 - (c) for damages in respect of the infringement;
 - (d) for an account of the profits derived by him from the infringement;
 - (e) for a declaration or declarator that the patent is valid and has been infringed by him.
- (2) The court shall not, in respect of the same infringement, both award the proprietor of a patent damages and order that he shall be given an account of the profits.
- (3) The proprietor of a patent and any other person may by agreement with each other refer to the comptroller the question whether that other person has infringed the patent and on the reference the proprietor of the patent may make any claim mentioned in subsection (1)(c) or (e) above.
- (4) Except so far as the context requires, in the following provisions of this Act—
- (a) any reference to proceedings for infringement and the bringing of such proceedings includes a reference to a reference under subsection (3) above and the making of such a reference;
 - (b) any reference to a [^{F13}claimant] or pursuer includes a reference to the proprietor of the patent; and
 - (c) any reference to a defendant or defender includes a reference to any other party to the reference.
- (5) If it appears to the comptroller on a reference under subsection (3) above that the question referred to him would more properly be determined by the court, he may decline to deal with it and the court shall have jurisdiction to determine the question as if the reference were proceedings brought in the court.
- (6) Subject to the following provisions of this Part of this Act, in determining whether or not to grant any kind of relief claimed under this section and the extent of the relief granted the court or the comptroller shall apply the principles applied by the court in relation to that kind of relief immediately before the appointed day.
- [^{F14}(7) If the comptroller awards any sum by way of damages on a reference under subsection (3) above, then—
- (a) in England and Wales, the sum shall be recoverable, if [^{F15}the county court] so orders, [^{F16} under section 85 of the County Courts Act 1984] or otherwise as if it were payable under an order of that court;
 - (b) in Scotland, payment of the sum may be enforced in like manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland;
 - (c) in Northern Ireland, payment of the sum may be enforced as if it were a money judgment.]

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Textual Amendments

- F13** Word in s. 61(4)(b) substituted (1.1.2005) by [Patents Act 2004 \(c. 16\)](#), s. 17(1), [Sch. 2 para. 14](#); S.I. 2004/3205, art. 2(k) (with art. 9)
- F14** S. 61(7) inserted (1.1.2005) by [Patents Act 2004 \(c. 16\)](#), ss. 11, 17(1); S.I. 2004/3205, art. 2(d) (with art. 9)
- F15** Words in s. 61(7)(a) substituted (E.W.S.) (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 9 para. 52](#); S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F16** Words in s. 61(7)(a) substituted (6.4.2014) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), s. 148, [Sch. 13 para. 41](#) (with s. 89); S.I. 2014/768, art. 2(1)(b)

62 Restrictions on recovery of damages for infringement.

- (1) In proceedings for infringement of a patent damages shall not be awarded, and no order shall be made for an account of profits, against a defendant or defender who proves that at the date of the infringement he was not aware, and had no reasonable grounds for supposing, that the patent existed; and a person shall not be taken to have been so aware or to have had reasonable grounds for so supposing by reason only of the application to a product of the word “patent” or “patented”, or any word or words expressing or implying that a patent has been obtained for the product, unless the number of the patent [^{F17} or a relevant internet link] accompanied the word or words in question.

[^{F18}(1A) The reference in subsection (1) to a relevant internet link is a reference to an address of a posting on the internet—

- (a) which is accessible to the public free of charge, and
- (b) which clearly associates the product with the number of the patent.]

- (2) In proceedings for infringement of a patent the court or the comptroller may, if it or he thinks fit, refuse to award any damages or make any such order in respect of an infringement committed during [^{F19}the further period specified in] section 25(4) above, but before the payment of the renewal fee and any additional fee prescribed for the purposes of that subsection.

- (3) Where an amendment of the specification of a patent has been allowed under any of the provisions of this Act, [^{F20}the court or the comptroller shall, when awarding damages or making an order for an account of profits in proceedings for an infringement of the patent committed before the decision to allow the amendment, take into account the following—

- (a) whether at the date of infringement the defendant or defender knew, or had reasonable grounds to know, that he was infringing the patent;
- (b) whether the specification of the patent as published was framed in good faith and with reasonable skill and knowledge;
- (c) whether the proceedings are brought in good faith.]

Textual Amendments

- F17** Words in s. 62(1) inserted (1.10.2014) by [Intellectual Property Act 2014 \(c. 18\)](#), ss. 15(1), 24(1); S.I. 2014/2330, art. 3, [Sch.](#) (with art. 5)

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- F18** S. 62(1A) inserted (1.10.2014) by [Intellectual Property Act 2014 \(c. 18\)](#), **ss. 15(2)**, 24(1); S.I. 2014/2330, art. 3, Sch.
- F19** Words in s. 62(2) substituted (1.10.2005) by [Patents Act 2004 \(c. 16\)](#), s. 17(1), **Sch. 2 para. 15**; S.I. 2005/2471, art. 2(g)
- F20** Words in s. 62(3) substituted (29.4.2006) by [Intellectual Property \(Enforcement, etc\) Regulations 2006 \(S.I. 2006/1028\)](#), art. 1, **Sch. 2 para. 2**

63 Relief for infringement of partially valid patent.

- (1) If the validity of a patent is put in issue in proceedings for infringement of the patent and it is found that the patent is only partially valid, the court or the comptroller may, subject to subsection (2) below, grant relief in respect of that part of the patent which is found to be valid and infringed.
- (2) Where in any such proceedings it is found that a patent is only partially valid, the court or the comptroller shall [^{F21}, when awarding damages, costs or expenses or making an order for an account of profits, take into account the following—
- (a) whether at the date of the infringement the defendant or defender knew, or had reasonable grounds to know, that he was infringing the patent;
 - (b) whether the specification of the patent was framed in good faith and with reasonable skill and knowledge;
 - (c) whether the proceedings are brought in good faith;
- and any relief granted shall be subject to the discretion of the court or the comptroller as to costs or expenses and as to the date from which damages or an account should be reckoned.]
- (3) As a condition of relief under this section the court or the comptroller may direct that the specification of the patent shall be amended to its or his satisfaction upon an application made for that purpose under section 75 below, and an application may be so made accordingly, whether or not all other issues in the proceedings have been determined.
- [^{F22}(4) The court or the comptroller may also grant relief under this section in the case of a European patent (UK) on condition that the claims of the patent are limited to its or his satisfaction by the European Patent Office at the request of the proprietor.]

Textual Amendments

- F21** Words in s. 63(2) substituted (29.4.2006) by [Intellectual Property \(Enforcement, etc\) Regulations 2006 \(S.I. 2006/1028\)](#), art. 1, **Sch. 2 para. 3**
- F22** S. 63(4) inserted (13.12.2007) by [Patents Act 2004 \(c. 16\)](#), **ss. 3(1)**, 17(1); S.I. 2007/3396, art. 2(e)

[^{F23}**64 Right to continue use begun before priority date.**

- (1) Where a patent is granted for an invention, a person who in the United Kingdom before the priority date of the invention—
- (a) does in good faith an act which would constitute an infringement of the patent if it were in force, or
 - (b) makes in good faith effective and serious preparations to do such an act,

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has the right to continue to do the act or, as the case may be, to do the act, notwithstanding the grant of the patent; but this right does not extend to granting a licence to another person to do the act.

- (2) If the act was done, or the preparations were made, in the course of a business, the person entitled to the right conferred by subsection (1) may—
- (a) authorise the doing of that act by any partners of his for the time being in that business, and
 - (b) assign that right, or transmit it on death (or in the case of a body corporate on its dissolution), to any person who acquires that part of the business in the course of which the act was done or the preparations were made.
- (3) Where a product is disposed of to another in exercise of the rights conferred by subsection (1) or (2), that other and any person claiming through him may deal with the product in the same way as if it had been disposed of by the registered proprietor of the patent.]

Textual Amendments

F23 S. 64 substituted by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), s. 295, [Sch. 5 para. 17](#)

65 Certificate of contested validity of patent.

- (1) If in any proceedings before the court or the comptroller the validity of a patent to any extent is contested and that patent is found by the court or the comptroller to be wholly or partially valid, the court or the comptroller may certify the finding and the fact that the validity of the patent was so contested.
- (2) Where a certificate is granted under this section, then, if in any subsequent proceedings before the court or the comptroller for infringement of the patent concerned or for revocation of the patent a final order or judgment or interlocutor is made or given in favour of the party relying on the validity of the patent as found in the earlier proceedings, that party shall, unless the court or the comptroller otherwise directs, be entitled to his costs or expenses as between solicitor and own client (other than the costs or expenses of any appeal in the subsequent proceedings).

66 Proceedings for infringement by a co-owner.

- (1) In the application of section 60 above to a patent of which there are two or more joint proprietors the reference to the proprietor shall be construed—
- (a) in relation to any act, as a reference to that proprietor or those proprietors who, by virtue of section 36 above or any agreement referred to in that section, is or are entitled to do that act without its amounting to an infringement; and
 - (b) in relation to any consent, as a reference to that proprietor or those proprietors who, by virtue of section 36 above or any such agreement, is or are the proper person or persons to give the requisite consent.
- (2) One of two or more joint proprietors of a patent may without the concurrence of the others bring proceedings in respect of an act alleged to infringe the patent, but shall not do so unless the others are made parties to the proceedings; but any of the others made a defendant or defender shall not be liable for any costs or expenses unless he enters an appearance and takes part in the proceedings.

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67 Proceedings for infringement by exclusive licensee.

- (1) Subject to the provisions of this section, the holder of an exclusive licence under a patent shall have the same right as the proprietor of the patent to bring proceedings in respect of any infringement of the patent committed after the date of the licence; and references to the proprietor of the patent in the provisions of this Act relating to infringement shall be construed accordingly.
- (2) In awarding damages or granting any other relief in any such proceedings the court or the comptroller shall take into consideration any loss suffered or likely to be suffered by the exclusive licensee as such as a result of the infringement, or, as the case may be, the profits derived from the infringement, so far as it constitutes an infringement of the rights of the exclusive licensee as such.
- (3) In any proceedings taken by an exclusive licensee by virtue of this section the proprietor of the patent shall be made a party to the proceedings, but if made a defendant or defender shall not be liable for any costs or expenses unless he enters an appearance and takes part in the proceedings.

68 Effect of non-registration on infringement proceedings.

Where by virtue of a transaction, instrument or event to which section 33 above applies a person becomes the proprietor or one of the proprietors or an exclusive licensee of a patent and the patent is subsequently infringed^{F24}... before the transaction, instrument or event is registered [^{F25}, in proceedings for such an infringement, the court or comptroller shall not award him costs or expenses] unless—

- (a) the transaction, instrument or event is registered within the period of six months beginning with its date; or
- (b) the court or the comptroller is satisfied that it was not practicable to register the transaction, instrument or event before the end of that period and that it was registered as soon as practicable thereafter.

Textual Amendments

F24 Words in s. 68 repealed (29.4.2006) by virtue of [Intellectual Property \(Enforcement, etc\) Regulations 2006 \(S.I. 2006/1028\)](#), [art. 1](#), [Sch. 2 para. 4\(a\)](#), Sch. 4

F25 Words in s. 68 inserted (29.4.2006) by [Intellectual Property \(Enforcement, etc\) Regulations 2006 \(S.I. 2006/1028\)](#), [art. 1](#), [Sch. 2 para. 4\(b\)](#)

69 Infringement of rights conferred by publication of application.

- (1) Where an application for a patent for an invention is published, then, subject to subsections (2) and (3) below, the applicant shall have, as from the publication and until the grant of the patent, the same right as he would have had, if the patent had been granted on the date of the publication of the application, to bring proceedings in the court or before the comptroller for damages in respect of any act which would have infringed the patent; and (subject to subsections (2) and (3) below) references in sections 60 to 62 and 66 to 68 above to a patent and the proprietor of a patent shall be respectively construed as including references to any such application and the applicant, and references to a patent being in force, being granted, being valid or existing shall be construed accordingly.

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- (2) The applicant shall be entitled to bring proceedings by virtue of this section in respect of any act only—
- (a) after the patent has been granted; and
 - (b) if the act 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.
- (3) Section 62(2) and (3) above shall not apply to an infringement of the rights conferred by this section, but in considering the amount of any damages for such an infringement, the court or the comptroller shall consider whether or not it would have been reasonable to expect, from a consideration of the application as published under section 16 above, that a patent would be granted conferring on the proprietor of the patent protection from an act of the same description as that found to infringe those rights, and if the court or the comptroller finds that it would not have been reasonable, it or he shall reduce the damages to such an amount as it or he thinks just.

70 Remedy for groundless threats of infringement proceedings.

- (1) Where a person (whether or not the proprietor of, or entitled to any right in, a patent) by circulars, advertisements or otherwise threatens another person with proceedings for any infringement of a patent, a person aggrieved by the threats (whether or not he is the person to whom the threats are made) may, subject to subsection (4) below, bring proceedings in the court against the person making the threats, claiming any relief mentioned in subsection (3) below.
- [^{F26}(2) In any such proceedings the claimant or pursuer shall, subject to subsection (2A) below, be entitled to the relief claimed if he proves that the threats were so made and satisfies the court that he is a person aggrieved by them.
- (2A) If the defendant or defender proves that the acts in respect of which proceedings were threatened constitute or, if done, would constitute an infringement of a patent—
- (a) the claimant or pursuer shall be entitled to the relief claimed only if he shows that the patent alleged to be infringed is invalid in a relevant respect;
 - (b) even if the claimant or pursuer does show that the patent is invalid in a relevant respect, he shall not be entitled to the relief claimed if the defendant or defender proves that at the time of making the threats he did not know, and had no reason to suspect, that the patent was invalid in that respect.]
- (3) The said relief is—
- (a) a declaration or declarator to the effect that the threats are unjustifiable;
 - (b) an injunction or interdict against the continuance of the threats; and
 - (c) damages in respect of any loss which the [^{F27}claimant] or pursuer has sustained by the threats.
- [^{F28}(4) Proceedings may not be brought under this section for—
- (a) a threat to bring proceedings for an infringement alleged to consist of making or importing a product for disposal or of using a process, or

Status: Point in time view as at 01/10/2014.

Changes to legislation: Patents Act 1977, Cross Heading: Infringement is up to date with all changes known to be in force on or before 30 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (b) a threat, made to a person who has made or imported a product for disposal or used a process, to bring proceedings for an infringement alleged to consist of doing anything else in relation to that product or process.]

[^{F29}(5) For the purposes of this section a person does not threaten another person with proceedings for infringement of a patent if he merely—

- (a) provides factual information about the patent,
- (b) makes enquiries of the other person for the sole purpose of discovering whether, or by whom, the patent has been infringed as mentioned in subsection (4)(a) above, or
- (c) makes an assertion about the patent for the purpose of any enquiries so made.]

[^{F30}(6) In proceedings under this section for threats made by one person (A) to another (B) in respect of an alleged infringement of a patent for an invention, it shall be a defence for A to prove that he used his best endeavours, without success, to discover—

- (a) where the invention is a product, the identity of the person (if any) who made or (in the case of an imported product) imported it for disposal;
- (b) where the invention is a process and the alleged infringement consists of offering it for use, the identity of a person who used the process;
- (c) where the invention is a process and the alleged infringement is an act falling within section 60(1)(c) above, the identity of the person who used the process to produce the product in question;

and that he notified B accordingly, before or at the time of making the threats, identifying the endeavours used.]

Textual Amendments

- F26** S. 70(2)(2A) substituted for s. 70(2) (1.1.2005) by [Patents Act 2004 \(c. 16\)](#), **ss. 12(2)**, 17(1); S.I. 2004/3205, [art. 2\(d\)](#) (with [art. 9](#))
- F27** Word in s. 70(3)(c) substituted (1.1.2005) by [Patents Act 2004 \(c. 16\)](#), s. 17(1), **Sch. 2 para. 17**; S.I. 2004/3205, [art. 2\(k\)](#) (with [art. 9](#))
- F28** S. 70(4) substituted (1.1.2005) by [Patents Act 2004 \(c. 16\)](#), **ss. 12(3)**, 17(1); S.I. 2004/3205, [art. 2\(d\)](#) (with [art. 9](#))
- F29** S. 70(5) substituted (1.1.2005) by [Patents Act 2004 \(c. 16\)](#), **ss. 12(4)**, 17(1); S.I. 2004/3205, [art. 2\(d\)](#) (with [art. 9](#))
- F30** S. 70(6) inserted (1.1.2005) by [Patents Act 2004 \(c. 16\)](#), **ss. 12(5)**, 17(1); S.I. 2004/3205, [art. 2\(d\)](#) (with [art. 9](#))

71 Declaration or declarator as to non-infringement.

(1) Without prejudice to the court's jurisdiction to make a declaration or declarator apart from this section, a declaration or declarator that an act does not, or a proposed act would not, constitute an infringement of a patent may be made by the court or the comptroller in proceedings between the person doing or proposing to do the act and the proprietor of the patent, notwithstanding that no assertion to the contrary has been made by the proprietor, if it is shown—

- (a) that that person has applied in writing to the proprietor for a written acknowledgment to the effect of the declaration or declarator claimed, and has furnished him with full particulars in writing of the act in question; and
- (b) that the proprietor has refused or failed to give any such acknowledgment.

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- (2) Subject to section 72(5) below, a declaration made by the comptroller under this section shall have the same effect as a declaration or declarator by the court.

Status:

Point in time view as at 01/10/2014.

Changes to legislation:

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