



# Patents Act 1977

## 1977 CHAPTER 37

### PART I

#### NEW DOMESTIC LAW

##### *Property in patents and applications, and registration*

#### **37 Determination of right to patent after grant.**

- [<sup>F1</sup>(1) After a patent has been granted for an invention any person having or claiming a proprietary interest in or under the patent may refer to the comptroller the question—
- (a) who is or are the true proprietor or proprietors of the patent,
  - (b) whether the patent should have been granted to the person or persons to whom it was granted, or
  - (c) whether any right in or under the patent should be transferred or granted to any other person or persons;
- and the comptroller shall determine the question and make such order as he thinks fit to give effect to the determination.]
- (2) Without prejudice to the generality of subsection (1) above, an order under that subsection may contain provision—
- (a) directing that the person by whom the reference is made under that subsection shall be included (whether or not to the exclusion of any other person) among the persons registered as proprietors of the patent;
  - (b) directing the registration of a transaction, instrument or event by virtue of which that person has acquired any right in or under the patent;
  - (c) granting any licence or other right in or under the patent;
  - (d) directing the proprietor of the patent or any person having any right in or under the patent to do anything specified in the order as necessary to carry out the other provisions of the order.
- (3) If any person to whom directions have been given under subsection (2)(d) above fails to do anything necessary for carrying out any such directions within 14 days after the

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*Changes to legislation: Patents Act 1977, Section 37 is up to date with all changes known to be in force on or before 14 March 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) View outstanding changes*

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date of the order containing the directions, the comptroller may, on application made to him by any person in whose favour or on whose reference the order containing the directions was made, authorise him to do that thing on behalf of the person to whom the directions were given.

- (4) Where the comptroller finds on a reference under [<sup>F2</sup>this section] that the patent was granted to a person not entitled to be granted that patent (whether alone or with other persons) and on an application made under section 72 below makes an order on that ground for the conditional or unconditional revocation of the patent, the comptroller may order that the person by whom the application was made or his successor in title may, subject to section 76 below, make a new application for a patent—
- (a) in the case of unconditional revocation, for the whole of the matter comprised in the specification of that patent; and
  - (b) in the case of conditional revocation, for the matter which in the opinion of the comptroller should be excluded from that specification by amendment under section 75 below;

and where such a new application is made, it shall be treated as having been filed on the date of filing the application for the patent to which the reference relates.

- (5) On any such reference no order shall be made under this section transferring the patent to which the reference relates on the ground that the patent was granted to a person not so entitled, and no order shall be made under subsection (4) above on that ground, if the reference was made after [<sup>F3</sup>the second anniversary of] the date of the grant, unless it is shown that any person registered as a proprietor of the patent knew at the time of the grant or, as the case may be, of the transfer of the patent to him that he was not entitled to the patent.
- (6) An order under this section shall not be so made as to affect the mutual rights or obligations of trustees or of the personal representatives of a deceased person, or their rights or obligations as such.
- (7) Where a question is referred to the comptroller under [<sup>F2</sup>this section] an order shall not be made by virtue of subsection (2) or under subsection (4) above on the reference unless notice of the reference is given to all persons registered as proprietor of the patent or as having a right in or under the patent, except those who are parties to the reference.
- (8) If it appears to the comptroller on a reference under [<sup>F4</sup>this section] that the question referred to him would more properly be determined by the court, he may decline to deal with it and, without prejudice to the court's jurisdiction to determine any such question and make a declaration, or any declaratory jurisdiction of the court in Scotland, the court shall have jurisdiction to do so.
- (9) The court shall not in the exercise of any such declaratory jurisdiction determine a question whether a patent was granted to a person not entitled to be granted the patent if the proceedings in which the jurisdiction is invoked were commenced after [<sup>F5</sup>the second anniversary of] the date of the grant of the patent, unless it is shown that any person registered as a proprietor of the patent knew at the time of the grant or, as the case may be, of the transfer of the patent to him that he was not entitled to the patent.

#### Textual Amendments

- F1** S. 37(1) substituted by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), s. 295, [Sch. 5 para. 9\(2\)](#)

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- F2** Words substituted by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), s. 295, **Sch. 5 para. 9(3)(a)**
- F3** Words in s. 37(5) substituted (1.10.2014) by [Intellectual Property Act 2014 \(c. 18\)](#), s. 24(1), **Sch. para. 3(1)(a)**; S.I. 2014/2330, art. 3, Sch.
- F4** Words substituted by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), s. 295, **Sch. 5 para. 9(3)(b)**
- F5** Words in s. 37(9) substituted (1.10.2014) by [Intellectual Property Act 2014 \(c. 18\)](#), s. 24(1), **Sch. para. 3(1)(a)**; S.I. 2014/2330, art. 3, Sch.

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 56(4)(a)(iiia) and word added by [S.I. 2006/1056 Sch. para. 2\(b\)](#) (This amendment comes into force on the day on which 2005 asp 13, s. 20 comes into force, see art. 1(2)(b))
- s. 63(3)(a) words in s. 63(3) renumbered as s. 63(3)(a) by [2004 c. 16 s. 2\(4\)](#) (Amendment not applied to legislation.gov.uk. S. 2(4) was repealed (29.4.2006) by S.I. 2006/1028, art. 2(4), Sch. 4)
- s. 63(3)(b) and word inserted by [2004 c. 16 s. 2\(4\)](#) (Amendment not applied to legislation.gov.uk. S. 2(4) was repealed (29.4.2006) by S.I. 2006/1028, art. 2(4), Sch. 4)