



# Copyright, Designs and Patents Act 1988

## 1988 CHAPTER 48

### PART III

#### DESIGN RIGHT

#### CHAPTER IV

##### JURISDICTION OF THE COMPTROLLER AND THE COURT

##### *Jurisdiction of the comptroller*

#### **246 Jurisdiction to decide matters relating to design right.**

- (1) A party to a dispute as to any of the following matters may refer the dispute to the comptroller for his decision—
  - (a) the subsistence of design right,
  - (b) the term of design right, or
  - (c) the identity of the person in whom design right first vested;and the comptroller's decision on the reference is binding on the parties to the dispute.
- (2) No other court or tribunal shall decide any such matter except—
  - (a) on a reference or appeal from the comptroller,
  - (b) in infringement or other proceedings in which the issue arises incidentally, or
  - (c) in proceedings brought with the agreement of the parties or the leave of the comptroller.
- (3) The comptroller has jurisdiction to decide any incidental question of fact or law arising in the course of a reference under this section.

#### **247 Application to settle terms of licence of right.**

- (1) A person requiring a licence which is available as of right by virtue of—

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- (a) section 237 (licences available in last five years of design right), or
  - (b) an order under section 238 (licences made available in the public interest),
- may apply to the comptroller to settle the terms of the licence.
- (2) No application for the settlement of the terms of a licence available by virtue of section 237 may be made earlier than one year before the earliest date on which the licence may take effect under that section.
- (3) The terms of a licence settled by the comptroller shall authorise the licensee to do—
- (a) in the case of licence available by virtue of section 237, everything which would be an infringement of the design right in the absence of a licence;
  - (b) in the case of a licence available by virtue of section 238, everything in respect of which a licence is so available.
- (4) In settling the terms of a licence the comptroller shall have regard to such factors as may be prescribed by the Secretary of State by order made by statutory instrument.
- (5) No such order shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.
- (6) Where the terms of a licence are settled by the comptroller, the licence has effect—
- (a) in the case of an application in respect of a licence available by virtue of section 237 made before the earliest date on which the licence may take effect under that section, from that date;
  - (b) in any other case, from the date on which the application to the comptroller was made.

**248 Settlement of terms where design right owner unknown.**

- (1) This section applies where a person making an application under section 247 (settlement of terms of licence of right) is unable on reasonable inquiry to discover the identity of the design right owner.
- (2) The comptroller may in settling the terms of the licence order that the licence shall be free of any obligation as to royalties or other payments.
- (3) If such an order is made the design right owner may apply to the comptroller to vary the terms of the licence with effect from the date on which his application is made.
- (4) If the terms of a licence are settled by the comptroller and it is subsequently established that a licence was not available as of right, the licensee shall not be liable in damages for, or for an account of profits in respect of, anything done before he was aware of any claim by the design right owner that a licence was not available.

**249 Appeals as to terms of licence of right.**

- (1) An appeal lies from any decision of the comptroller under section 247 or 248 (settlement of terms of licence of right) to the Appeal Tribunal constituted under section 28 of the <sup>M1</sup>Registered Designs Act 1949.
- (2) Section 28 of that Act applies to appeals from the comptroller under this section as it applies to appeals from the registrar under that Act; but rules made under that section may make different provision for appeals under this section.

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#### **Marginal Citations**

**M1** 1949 c. 88.

### **250 Rules.**

- (1) The Secretary of State may make rules for regulating the procedure to be followed in connection with any proceeding before the comptroller under this Part.
- (2) Rules may, in particular, make provision—
  - (a) prescribing forms;
  - (b) requiring fees to be paid;
  - (c) authorising the rectification of irregularities of procedure;
  - (d) regulating the mode of giving evidence and empowering the comptroller to compel the attendance of witnesses and the discovery of and production of documents;
  - (e) providing for the appointment of advisers to assist the comptroller in proceedings before him;
  - (f) prescribing time limits for doing anything required to be done (and providing for the alteration of any such limit); and
  - (g) empowering the comptroller to award costs and to direct how, to what party and from what parties, costs are to be paid.
- (3) Rules prescribing fees require the consent of the Treasury.
- (4) The remuneration of an adviser appointed to assist the comptroller shall be determined by the Secretary of State with the consent of the Treasury and shall be defrayed out of money provided by Parliament.
- (5) Rules shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### *Jurisdiction of the court*

### **251 References and appeals on design right matters.**

- (1) In any proceedings before him under section 246 (reference of matter relating to design right), the comptroller may at any time order the whole proceedings or any question or issue (whether of fact or law) to be referred, on such terms as he may direct, to the High Court or, in Scotland, the Court of Session.
- (2) The comptroller shall make such an order if the parties to the proceedings agree that he should do so.
- (3) On a reference under this section the court may exercise any power available to the comptroller by virtue of this Part as respects the matter referred to it and, following its determination, may refer any matter back to the comptroller.
- (4) An appeal lies from any decision of the comptroller in proceedings before him under section 246 (decisions on matters relating to design right) to the High Court or, in Scotland, the Court of Session.

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## **252 Reference of disputes relating to Crown use.**

- (1) A dispute as to any matter which falls to be determined by the court in default of agreement under—
  - (a) section 241 (settlement of terms for Crown use),
  - (b) section 242 (rights of third parties in case of Crown use), or
  - (c) section 243 (Crown use: compensation for loss of profit),may be referred to the court by any party to the dispute.
- (2) In determining a dispute between a government department and any person as to the terms for Crown use of a design the court shall have regard to—
  - (a) any sums which that person or a person from whom he derives title has received or is entitled to receive, directly or indirectly, from any government department in respect of the design; and
  - (b) whether that person or a person from whom he derives title has in the court's opinion without reasonable cause failed to comply with a request of the department for the use of the design on reasonable terms.
- (3) One of two or more joint owners of design right may, without the concurrence of the others, refer a dispute to the court under this section, but shall not do so unless the others are made parties; and none of those others is liable for any costs unless he takes part in the proceedings.
- (4) Where the consent of an exclusive licensee is required by section 242(3)(a)(i) to the settlement by agreement of the terms for Crown use of a design, a determination by the court of the amount of any payment to be made for such use is of no effect unless the licensee has been notified of the reference and given an opportunity to be heard.
- (5) On the reference of a dispute as to the amount recoverable as mentioned in section 242(3)(a)(ii) (right of exclusive licensee to recover part of amount payable to design right owner) the court shall determine what is just having regard to any expenditure incurred by the licensee—
  - (a) in developing the design, or
  - (b) in making payments to the design right owner in consideration of the licence (other than royalties or other payments determined by reference to the use of the design).
- (6) In this section “the court” means—
  - (a) in England and Wales, the High Court or any patents county court having jurisdiction by virtue of an order under section 287 of this Act,
  - (b) in Scotland, the Court of Session, and
  - (c) in Northern Ireland, the High Court.

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