



Patents Act 1949

1949 CHAPTER 87

Grant, effect and term of patent

19 Grant and sealing of patent

- (1) Subject to the provisions of this Act with respect to opposition, and to any other power of the comptroller to refuse the grant, a patent sealed with the seal of the Patent Office shall, if the prescribed request is made within the time allowed under this section, be granted to the applicant or applicants within that time or as soon as may be thereafter; and the date on which the patent is sealed shall be entered in the register of patents.
- (2) Subject to the following provisions of this Act with respect to patents of addition, a request under this section for the sealing of a patent shall be made not later than the expiration of four months from the date of the publication of the complete specification:

Provided that—

- (a) where at the expiration of the said four months any proceeding in relation to the application for the patent is pending in any court or before the comptroller or the Appeal Tribunal, the request may be made within the prescribed period after the final determination of that proceeding;
 - (b) where the applicant or one of the applicants has died before the expiration of the time within which under the provisions of this subsection the request could otherwise be made, the said request may be made at any time within twelve months after the date of the death or at such later time as the comptroller may allow.
- (3) The period within which under the last foregoing subsection a request for the sealing of a patent may be made from time to time be extended by the comptroller to such longer period as may be specified in an application made to him in that behalf, if the application is made and the prescribed fee paid within that longer period:

Provided that the first-mentioned period shall not be extended under this subsection by more than six months or such shorter period as may be prescribed.

- (4) Where in any case the longest period for making a request for the sealing of a patent allowable in that case by or under the foregoing provisions of this section has been allowed, and it is proved to the satisfaction of the comptroller that hardship would arise in connection with the prosecution by an applicant of an application for a patent in any country outside the United Kingdom unless that period is extended, that period may be extended from time to time to such longer period as appears to the comptroller to be necessary in order to prevent that hardship arising if an application in that behalf is made to him, and the prescribed fee is paid, within the first-mentioned period, or in the case of a second or subsequent application under this subsection, within the period to which that period was extended on the last preceding application thereunder.
- (5) For the purposes of this section a proceeding shall be deemed to be pending so long as the time for any appeal therein (apart from any future extension of that time) has not expired, and a proceeding shall be deemed to be finally determined when the time for any appeal therein (apart from any such extension) has expired without the appeal being brought.

20 Amendment of patent granted to deceased applicant

Where, at any time after a patent has been sealed in pursuance of an application under this Act, the comptroller is satisfied that the person to whom the patent was granted had died, or (in the case of a body corporate) had ceased to exist, before the patent was sealed, he may amend the patent by substituting for the name of that person the name of the person to whom the patent ought to have been granted; and the patent shall have effect, and shall be deemed always to have had effect, accordingly.

21 Extent, effect and form of patent

- (1) A patent sealed with the seal of the Patent Office shall have the same effect as if it were sealed with the Great Seal of the United Kingdom, and shall have effect throughout the United Kingdom and the Isle of Man:

Provided that a patent may be assigned for any place in or part of the United Kingdom or Isle of Man as effectually as if it were granted so as to extend to that place or part only.
- (2) Subject to the provisions of this Act and of subsection (3) of section three of the Crown Proceedings Act, 1947, a patent shall have the same effect against the Crown as it has against a subject.
- (3) A patent shall be in such form as may be authorised by rules made by the Board of Trade under this Act.
- (4) A patent shall be granted for one invention only; but it shall not be competent for any person in an action or other proceeding to take any objection to a patent on the ground that it has been granted for more than one invention.

22 Date and term of patent

- (1) Every patent shall be dated with the date of filing of the complete specification:

Provided that no proceeding shall be taken in respect of an infringement committed before the date of the publication of the complete specification.

- (2) The date of every patent shall be entered in the register of patents.
- (3) Except as otherwise expressly provided by this Act, the term of every patent shall be sixteen years from the date of the patent.
- (4) A patent shall cease to have effect, notwithstanding anything therein or in this Act, on the expiration of the period prescribed for the payment of any renewal fee if that fee is not paid within the prescribed period or within that period as extended under this section.
- (5) The period prescribed for the payment of any renewal fee shall be extended to such period, not being more than three months longer than the prescribed period, as may be specified in a request made to the comptroller if the request is made and the renewal fee and the prescribed additional fee paid before the expiration of the period so specified.

23 Extension on ground of inadequate remuneration

- (1) If upon application made by a patentee in accordance with this section the court is satisfied that the patentee has not been adequately remunerated by the patent, the court may by order extend the term of the patent, subject to such restrictions, conditions and provisions, if any, as may be specified in the order, for such period (not exceeding five years or, in an exceptional case, ten years) as may be so specified ; and any such order may be made notwithstanding that the term of the patent has previously expired.
- (2) An application for an order under this section shall be made by petition after such advertisement as may be prescribed by rules of court, and shall be made not more than twelve nor less than six months before the expiration of the term of the patent or at such later time (not being later than the expiration of the said term) as the court may allow.
- (3) Any person desiring to oppose the making of an order under this section, or to claim the inclusion therein of any restrictions, conditions or provisions, may within such period as may be prescribed by rules of court give notice of opposition to the court.
- (4) On the hearing of any application under this section the applicant and any person by whom notice of opposition has been duly given shall be made parties to the proceeding; and the comptroller shall be entitled to appear and be heard, and shall appear if so directed by the court.
- (5) In considering any application under this section the court shall have regard to the nature and merits of the invention in relation to the public, to the profits made by the patentee as such, and to all the circumstances of the case.
- (6) Not more than one order shall be made under this section in respect of the same patent, but an order may be made under this section in respect of a patent in respect of which one or more orders have been made under the next following section.

24 Extension on ground of war loss

- (1) If upon application made by a patentee in accordance with this section the court or the comptroller is satisfied that the patentee as such has suffered loss or damage (including loss of opportunity of dealing in or developing the invention) by reason of hostilities between His Majesty and any foreign state, the court or comptroller may by order extend the term of the patent subject to such restrictions, conditions and provisions, if any, as may be specified in the order, for such period (not exceeding ten years) as

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may be so specified ; and any such order may be made notwithstanding that the term of the patent has previously expired.

- (2) An application for an order under this section may be made at the option of the applicant to the court or to the comptroller: but if the comptroller considers that an application made to him raises issues of a kind which would be more fittingly decided by the court, he may if he thinks fit refer the application or decision by the court.
- (3) An application under this section shall be made not more than twelve nor less than six months before the expiration of the term of the patent or at such later time as the court or comptroller may allow:

Provided that the court or comptroller shall not allow an application to be made later than the expiration of the said term unless satisfied that the applicant has been prevented from making the application before the expiration of that term by being on active service or by other circumstances arising by reason of any such hostilities as aforesaid.

- (4) Where an application under this section is made to the court, it may be made by petition or by originating summons after such advertisement as may be prescribed by rules of court; and where an application under this section is made to the comptroller, it shall be made in such manner as may be prescribed by rules made by the Board of Trade under this Act.
- (5) Any person desiring to oppose the making of an order under this section, or to claim the inclusion therein of any restrictions, conditions or provisions, may give notice of opposition to the court or, as the case may be, the comptroller—
 - (a) in the case of an application to the court, within such period as may be prescribed by rules of court; and
 - (b) in the case of an application to the comptroller, within such period as may be prescribed by rules made by the Board of Trade under this Act.
- (6) On the hearing of any application under this section the applicant and any person by whom notice of opposition has been duly given shall be made parties to the proceeding; and in the case of an application to the court, the comptroller shall be entitled to appear and be heard, and shall appear if so directed by the court.
- (7) Two or more orders may be made under this section in respect of the same patent, and an order may be made under this section in respect of a patent in respect of which an order has been made under the last foregoing section: but the aggregate term of any extensions granted in pursuance of orders made under this section shall not exceed ten years.
- (8) No order shall be made under this section on the application of—
 - (a) a person who is a subject of such a foreign state, as is mentioned in subsection (1) of this section; or
 - (b) a company the business of which is managed or controlled by such persons or is carried on wholly or mainly for the benefit of or on behalf of such persons, notwithstanding that the company may be registered within His Majesty's dominions ;

and for the purpose of this section no account shall be taken of any loss or damage suffered by any person during any period during which he was such a subject as aforesaid, or by any company during any period during which its business was managed or controlled or carried on as aforesaid.

(9) An appeal shall lie from any decision of the comptroller under this section.

25 Extension on ground of war loss of licensee

Subject to the provisions of the last foregoing section, an order for the extension of the term of a patent may be made under that section on the application of a person holding a licence from the patentee giving to the licensee, or to the licensee and persons authorised by him, to the exclusion of all other persons, permission to make, use, exercise and vend the invention, if the court or comptroller is satisfied that the licensee as such has suffered any such loss or damage as is mentioned in subsection (1) of that section.

26 Patents of addition

- (1) Subject to the provisions of this section, where application is made for a patent in respect of any improvement in or modification of an invention (in this Act referred to as "the main invention") and the applicant also applies or has applied for a patent for that invention or is the patentee in respect thereof, the comptroller may, if the applicant so requests, grant the patent for the improvement or modification as a patent of addition.
- (2) Subject to the provisions of this section, where an invention, being an improvement in or modification of another invention, is the subject of an independent patent and the patentee in respect of that patent is also the patentee in respect of the patent for the main invention, the comptroller may, if the patentee so requests, by order revoke the patent for the improvement or modification and grant to the patentee a patent of addition in respect thereof, bearing the same date as the date of the patent so revoked.
- (3) A patent shall not be granted as a patent of addition unless the date of filing of the complete specification was the same as or later than the date of filing of the complete specification in respect of the main invention.
- (4) A patent of addition shall not be sealed before the sealing of the patent for the main invention; and if the period within which, but for this provision, a request for the sealing of a patent of addition could be made under section nineteen of this Act expires before the period within which a request for the sealing of the patent for the main invention may be so made, the request for the sealing of the patent of addition may be made at any time within the last-mentioned period.
- (5) A patent of addition shall be granted for a term equal to that of the patent for the main invention, or so much thereof as is unexpired, and shall remain in force during that term or until the previous cesser of the patent for the main invention and no longer:

Provided that—

- (a) if the term of the patent for the main invention is extended under the foregoing provisions of this Act, the term of the patent of addition may also be extended accordingly; and
- (b) if the patent for the main invention is revoked under this Act, the court or comptroller, as the case may be, may order that the patent of addition shall become an independent patent for the remainder of the term of the patent for the main invention, and thereupon the patent shall continue in force as an independent patent accordingly.

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- (6) No renewal fees shall be payable in respect of a patent of addition; but, if any such patent becomes an independent patent by virtue of an order under the last foregoing subsection, the same fees shall thereafter be payable, upon the same dates, as if the patent had been originally granted as an independent patent.
- (7) The grant of a patent of addition shall not be refused, and a patent granted as a patent of addition shall not be revoked or invalidated, on the ground only that the invention claimed in the complete specification does not involve any inventive step having regard to any publication or use of—
- (a) the main invention described in the complete specification relating thereto ; or
 - (b) any improvement in or modification of the main invention described in the complete specification of a patent of addition to the patent for the main invention or of an application for such a patent of addition;
- and the validity of a patent of addition shall not be questioned on the ground that the invention ought to have been the subject of an independent patent.
- (8) An appeal shall lie from any decision of the comptroller under this section.