



# Patents Act 1949

## 1949 CHAPTER 87

### *Restoration of lapsed patents and patent applications*

#### **27 Restoration of lapsed patents**

- (1) Where a patent has ceased to have effect by reason of a failure to pay any renewal fee within the prescribed period or within that period as extended under section twenty-two of this Act, and the comptroller is satisfied, upon application made within three years from the date on which the patent ceased to have effect, that the failure was unintentional and that no undue delay has occurred in the making or prosecution of the application, he shall by order restore the patent and any patent of addition specified in the application which has ceased to have effect on the cesser of that patent.
- (2) An application under this section may be made by the person who was the patentee or by his personal representative ; and where the patent was held by two or more persons jointly, the application may, with the leave of the comptroller, be made by one or more of them without joining the others.
- (3) An application under this section shall contain a statement (to be verified in such manner as may be prescribed) fully setting out the circumstances which led to the failure to pay the renewal fee; and the comptroller may require from the applicant such further evidence as he may think necessary.
- (4) If after hearing the applicant (if the applicant so requires or the comptroller thinks fit) the comptroller is satisfied that a prima facie case has been made out for an order under this section, he shall advertise the application in the Journal; and within the prescribed period any person may give notice to the comptroller of opposition thereto on either or both of the following grounds, that is to say—
  - (a) that the failure to pay the renewal fee was not unintentional ; or
  - (b) that there has been undue delay in the making of the application.
- (5) If notice of opposition is given within the period aforesaid, the comptroller shall notify the applicant, and shall give to him and to the opponent an opportunity to be heard before he decides the case.

- (6) If no notice of opposition is given within the period aforesaid or if, in the case of opposition, the decision of the comptroller is in favour of the applicant, the comptroller shall, upon payment of any unpaid renewal fee and such additional fee as may be prescribed, make the order in accordance with the application.
- (7) An order under this section for the restoration of a patent—
- (a) may be made subject to such conditions as the comptroller thinks fit, including in particular a condition requiring the registration in the register of patents of any matter in respect of which the provisions of this Act as to entries in that register have not been complied with; and
  - (b) shall contain such provision as may be prescribed for the protection of persons who may have begun to avail themselves of the patented invention between the date when the patent ceased to have effect and the date of the application under this section ;
- and if any condition of an order under this section is not complied with by the patentee the comptroller may, after giving to the patentee an opportunity to be heard, revoke the order and give such directions consequential on the revocation as he thinks fit.
- (8) An appeal shall lie from any decision of the comptroller under this section.

## **28 Restoration of lapsed applications for patents**

- (1) Where a patent has not been sealed by reason only that the prescribed request was not made within the time allowed for that purpose by or under section nineteen of this Act, then if the comptroller is satisfied, upon application made within six months after the expiration of that time by the applicant for the patent, that the failure to make the request was unintentional, he may order the patent to be sealed notwithstanding that the prescribed request was not made as aforesaid.
- (2) An application under this section shall contain a statement (to be verified in such manner as may be prescribed) fully setting out the circumstances which led to the failure to make the prescribed request; and the comptroller may require from the applicant such further evidence as he may think necessary.
- (3) If after hearing the applicant (if the applicant so requires or the comptroller thinks fit) the comptroller is satisfied that a prima facie case has been made out for an order under this section, he shall advertise the application in the Journal; and within the prescribed period any person may give notice to the comptroller of opposition thereto on the ground that the failure to make the prescribed request was not unintentional.
- (4) If notice of opposition is given within the period aforesaid, the comptroller shall notify the applicant and shall give to him and to the opponent an opportunity to be heard before he decides the case.
- (5) If no notice of opposition is given within the period aforesaid, or if in the case of opposition the decision of the comptroller is in favour of the applicant, the comptroller shall, upon payment of the fee prescribed in respect of the making of the request for sealing and of such additional fee as may be prescribed, make the order in accordance with the application.
- (6) An order under this section for the sealing of a patent shall contain such provision as may be prescribed for the protection of persons who may have begun to avail themselves of the invention between the date when the time allowed by or under

section nineteen of this Act for making the prescribed request expired and the date of the application under this section.

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