

1990 No. 1495 (L.14)

COUNTY COURTS

PROCEDURE

The County Court (Amendment No. 2) Rules 1990

Made - - - - - *20th July 1990*

Coming into force - - - - - *3rd September 1990*

1. These Rules may be cited as the County Court (Amendment No. 2) Rules 1990 and shall come into force on 3rd September 1990.

2. The County Court Rules 1981(a) shall be amended by inserting, after Order 48, the following:-

“ORDER 48A

PATENTS AND DESIGNS

Application and Interpretation

1.—(1) This Order applies to proceedings in respect of which patents county courts have jurisdiction under section 287(1) of the 1988 Act.

(2) In this Order:-

“The 1988 Act” means the Copyright, Designs and Patents Act 1988(b);

“patents county court” means a county court designated as a patents county court under section 287(1) of the 1988 Act;

“patents judge” means a person nominated under section 291(1) of the 1988 Act as the patents judge of a patents county court.

Patents Judge

2.—(1) Subject to paragraph (2), proceedings to which this Order applies shall be dealt with by the patents judge.

(2) When an interlocutory matter needs to be dealt with urgently and the patents judge is not available, the matter may be dealt with by another judge.

Commencement

3. Every summons, notice, pleading, affidavit or other document relating to proceedings to which this Order applies must be marked in the top left hand corner with the words “patents county court”.

(a) S.I. 1981/1687; the relevant amending instruments are S.I. 1982/1794, 1983/275, 1716, 1984/878, 1988/278 and 1989/236, 1838, 2426.

(b) 1988 c.48.

Pleadings

4.—(1) Every summons issued in accordance with rule 3 above shall be endorsed with or accompanied by a statement of case.

(2) Where a claim is made by the plaintiff in respect of the infringement of a patent, the statement of case shall give full particulars of the infringement relied on, setting out:—

- (a) which of the claims in the specification of the patent are alleged to be infringed; and
- (b) in respect of each claim alleged to be infringed the grounds relied on in support of the allegations that such claim has been infringed; and all facts, matters and arguments relied on as establishing those grounds, including at least one example of each type of infringement alleged.

(3) Where, in any proceedings, the validity of a patent is put in issue, the statement of case shall give particulars of the objections to the validity of the patent which are relied on; and in particular shall explain the relevance of every citation to each claim, with identification of the significant parts of each citation, and shall give all facts, matters and arguments which are relied on for establishing the invalidity of the patent.

(4) Without prejudice to paragraph (3) above, RSC Order 104, rule 6(2) to (4) shall apply to particulars of objections given under paragraph (3) as they apply to particulars given under paragraph (1) of that rule.

(5) Every statement of case shall be signed:—

- (a) by the plaintiff, if he sues in person; or
 - (b) by the plaintiff's solicitor in his own name or the name of his firm;
- and shall state the plaintiff's address for service.

(6) Where a defendant wishes to serve a defence to any claim he shall serve it, together with any counterclaim including a statement of case under paragraph (2) or (3) above, upon the plaintiff within 42 days of service upon him of the summons.

(7) Where a party wishes to serve a reply or a defence to counterclaim, he shall do so within 28 days of the service of the previous pleading upon him.

(8) Pleadings will close seven days after the expiry of the time for service of a reply.

(9) No time limit mentioned in this rule may be extended more than once (and then by no more than 42 days) save by order of the court; and such order shall, in the first place, be applied for in writing, whereupon the judge shall either grant the application, refuse it or order a hearing.

(10) The parties to proceedings shall notify the court of any agreed extension of any time limit mentioned in this rule.

Service

5.—(1) In their application to proceedings to which this Order applies, rules 10 and 13 of Order 7 shall apply as if:—

- (a) before the words "an officer" in paragraph (1)(b) of each rule there were inserted the words "the plaintiff or"; and
- (b) in paragraph (4) of rule 10 (and in that paragraph as applied by rule 13) after the words "sent by post" there were inserted the words "by an officer of the court".

(2) Where a pleading is served which refers to any document, the party serving the pleading must also serve with it a copy of any such document together with an English translation of any foreign language text, certified as being accurate.

Interrogatories and Notices to Admit Facts

- 6.—(1) (a) Interrogatories under Order 14, rule 11, and
(b) a notice to admit facts under Order 20, rule 2,

may not be served without the leave of the court unless (in the case of a notice to admit facts) it is served within 14 days of the close of pleadings; and accordingly those provisions of Order 14, rule 11 (and of the RSC which are applied by that rule) which

relate only to interrogatories without order shall not apply to proceedings under this Order.

(2) An application for leave to serve interrogatories or a notice to admit facts may only be made on notice at the preliminary consideration under rule 8.

Scientific Advisers, Assessors and Patent Office Reports

7.—(1) The court may at any time, on or without the application of any party:—

- (a) appoint scientific advisers or assessors to assist the court; or
- (b) order the Patent Office to inquire into and report on any question of fact or opinion.

(2) RSC Order 104, rule 15 shall apply to the appointment of a scientific adviser under this rule.

(3) Where the court appoints an assessor under this rule without the application of a party, paragraphs (3) and (6) of Order 13, rule 11 shall apply, and paragraph (4) of that rule shall apply with the omission of the words from “the applicant shall” to “and thereupon” inclusive.

Preliminary Consideration

8.—(1) Within fourteen days of the close of pleadings, all parties shall file and serve an application for directions, signed by the person settling it.

(2) Each application for directions shall:

- (a) summarise the outstanding issues in the proceedings;
- (b) summarise the further steps necessary to prove the applicant’s contentions in the proceedings and prepare his case for a hearing;
- (c) give full particulars of any experiments the applicant intends to conduct, stating the facts which he intends to prove by them and the date by which he will submit a written report of the results; and
- (d) set out all orders and directions the applicant will ask for at the preliminary consideration of the action.

(3) As soon as is practicable after receipt of each party’s application for directions, the proper officer shall set a date for the preliminary consideration.

(4) On the preliminary consideration the judge may, with or without the application of any party and either after a consideration of the papers or having adjudicated upon a point of law strike out any point raised in the proceedings.

(5) On the preliminary consideration, the judge shall give such directions as are necessary to prepare the proceedings for hearing and in particular shall consider and (where appropriate) give directions in respect of each or any of the following matters, namely:—

- (a) the witnesses who may be called;
- (b) whether their evidence should be given orally or in writing or any combination of the two;
- (c) the exchange of witness statements;
- (d) the provision of Patent Office Reports;
- (e) the use of assessors at the hearing;
- (f) transfer to the High Court;
- (g) reference to the Court of Justice of the European Communities;
- (h) applications for discovery and inspection;
- (i) applications for leave under rule 6 above; and
- (j) written reports of the results of any experiments of which particulars have been given under rule 8(2)(c).

General Modification of County Court Rules

9. In their application to proceedings to which this Order applies, county court rules shall be subject to the following modifications:—

- (a) Order 3 rules 3(1) and (2)(c) shall have effect as if for the words "particulars of claim" there are substituted the words "statement of case".
- (b) in Order 3, rule 3(2)(a), the words from "and in the case" to "return day" inclusive shall be omitted;
- (c) Order 3, rule 3(3) shall not apply;
- (d) Order 6, rule 7 shall not apply;
- (e) Order 9 shall not apply, with the exception of Order 9 rule 19, which shall apply to every defence or counterclaim delivered under rule 4(6) above as it applies to those delivered under Order 9 rule 2.

Application of Rules of the Supreme Court

10.—(1) RSC Order 104, rule 3 shall apply to applications by a patentee or the proprietor of a patent intending to apply under section 30 of the Patents Act 1949 or section 75 of the Patents Act 1977 for leave to amend his specification, save that references therein to an application by motion shall be construed, for the purposes of an application to a patents county court, as an application on notice to the patents judge.

(2) RSC Order 104, rule 17 shall apply to actions to which this Order applies, with the omission of the words "by originating summons".

(3) RSC Order 104, rule 16(3), rule 20 and rule 23 shall apply to actions to which this Order applies."

We, the undersigned members of the Rule Committee appointed by the Lord Chancellor under section 75 of the County Courts Act 1984(a), having by virtue of the powers vested in us in this behalf made the foregoing Rules, do hereby certify the same under our hands and submit them to the Lord Chancellor accordingly.

<i>C. S. Stuart-White</i>	<i>R. Greenslade</i>
<i>Eifion Roberts, Q.C.</i>	<i>G. Stuart-Brown</i>
<i>R. Hammerton</i>	<i>K. H. P. Wilkinson</i>
<i>R. H. Hutchinson</i>	<i>R. C. Newport</i>

I allow these rules, which shall come into force on 3rd September 1990

Dated 20th July 1990

Mackay of Clashfern, C.

EXPLANATORY NOTE

(This note is not part of the Order)

The Lord Chancellor has power under section 287(1) of the Copyright, Designs and Patents Act 1988 to designate a county court as a patents county court, with jurisdiction to hear and determine proceedings relating to patents or designs (and matters ancillary thereto). This Order amends the County Court Rules 1981 by adding a new Order 48A, which will establish a procedure for this new county court jurisdiction.

The new Order is based upon Order 104 of the Rules of the Supreme Court and the recommendations contained in the Report of the Committee on Patent Litigation (Lord Chancellor's Department, November 1987). It will provide that all proceedings in a patents county court shall be commenced by summons. Rule 4 of the new Order will set out details which parties must include in pleadings to which this Order will apply. Rule 8 will make provision for the service of an application for directions and the preliminary consideration of the case, which will be a form of pre-trial review specially adapted to meet the needs of patents litigation. The other special feature of the new rule will be the restrictions it will place upon the use of interlocutory applications. Parties will be unable to serve applications for further and better particulars in proceedings to which this Order will apply; and interrogatories and notices to admit facts will require the leave of the court (save when a notice to admit facts is served within 14 days of the close of pleadings).

(a) 1984 c.28.