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STATUTORY INSTRUMENTS

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**2004 No. 2357**

**The Regulatory Reform (Patents) Order 2004**

**Amendment of the Patents Act 1977**

18. After section 117 of that Act there shall be inserted—

**“Section 117A Effect of resuscitating a withdrawn application under section 117**

(1) Where—

- (a) the comptroller is requested to correct an error or mistake in a withdrawal of an application for a patent; and
- (b) an application has been resuscitated in accordance with that request,

the effect of that resuscitation is as follows.

(2) Anything done under or in relation to the application during the period between the application being withdrawn and its resuscitation shall be treated as valid.

(3) If the comptroller has published notice of the request as mentioned in section 117(3) above, anything done during that period which would have constituted an infringement of the rights conferred by publication of the application if the application had not been withdrawn shall be treated as an infringement of those rights if it was a continuation or repetition of an earlier act infringing those rights.

(4) If the comptroller has published notice of the request as mentioned in section 117(3) above and, after the withdrawal of the application and before publication of the notice, a person—

- (a) began in good faith to do an act which would have constituted an infringement of the rights conferred by publication of the application if the withdrawal had not taken place, or
- (b) made in good faith effective and serious preparations to do such an act,

he has the right to continue to do the act or, as the case may be, to do the act, notwithstanding the resuscitation of the application and the grant of the patent; but this right does not extend to granting a licence to another person to do the act.

(5) If the act was done, or the preparations were made, in the course of a business, the person entitled to the right conferred by subsection (4) above may—

- (a) authorise the doing of that act by any partners of his for the time being in that business, and
- (b) assign that right, or transmit it on death (or in the case of a body corporate on its dissolution), to any person who acquires that part of the business in the course of which the act was done or the preparations were made.

(6) Where a product is disposed of to another in exercise of a right conferred by subsection (4) or (5) above, that other and any person claiming through him may deal with the product in the same way as if it had been disposed of by the applicant.

### **117B Extension of time limits specified by comptroller**

(1) Subsection (2) below applies in relation to a period if it is specified by the comptroller in connection with an application for a patent, or a patent.

(2) Subject to subsections (4) and (5) below, the comptroller shall extend a period to which this subsection applies if—

(a) the applicant or the proprietor of the patent requests him to do so; and

(b) the request complies with the relevant requirements of rules.

(3) An extension of a period under subsection (2) above expires—

(a) at the end of the period prescribed for the purposes of this subsection, or

(b) if sooner, at the end of the period prescribed for the purposes of section 20 above.

(4) If a period has already been extended under subsection (2) above—

(a) that subsection does not apply in relation to it again;

(b) the comptroller may further extend the period subject to such conditions as he thinks fit.

(5) Subsection (2) above does not apply to a period specified in relation to proceedings before the comptroller.”.