

# 英美專利法簡介

## 英國

英國乃專利制度之發源地。早在十四世紀時英王愛德華三世（1327－1377），爲了促進產業之進步，設法引進外國技術，對輸入外國技術之專家授以專利證書，特許其在國內自由營業，此即專利之起源。惟此類早期專利核准，並不限給予發明人，亦可給予外國技術之輸入者。伊麗莎白女王在位時（1558－1603）更以之授與宮廷之優惠者，迨詹姆士一世時更是濫用此權而成爲王室報答政治恩惠者之一種方便上之行政處分。於是日用品亦壟斷市場，物價高昂，品質低劣，國會遂於1623年頒布專賣條例（The Statute of Monopolies），並據之以撤銷不法授與之專利證書。使專利之保護，開始有法律之根據，此乃專利制度之濫觴，亦爲此後英國專利法之藍本。英國專利法之舊制度沿用了兩三百年，然自歐洲專利制度實施以後，1977年頒布之專利法取代1949年之專利法。

其法律沿革：

1907年 Patents and Designs Act

1949年 Patents Act

1957年 Patents Act

1977年 Patents Act

## 1977年專利法（Patents Act 1977）條文要旨

### PART I NEW DOMESTIC LAW Patentability

#### Section

- 1 Patentable inventions
- 2 Novelty
- 3 Inventive step
- 4 Industrial application
- 5 Priority date
- 6 Disclosure of matter, etc, between earlier and later applications

## **Right to apply for and obtain a patent and be mentioned as inventor**

- 7 Right to apply for and obtain a patent
- 8 Determination before grant of questions about entitlement to patents, etc.
- 9 Determination after grant of questions referred before grant
- 10 Handling of application by joint applicants
- 11 Effect of transfer of application under s 8 or 10
- 12 Determination of questions about entitlement to foreign and convention patents, etc
- 13 Mention of inventor

## **Applications**

- 14 Making of application
- 15 Date of filing application
- 16 Publication of application

## **Examination and search**

- 17 Preliminary examination and search
- 18 Substantive examination and grant or refusal of patent
- 19 General power to amend application before grant
- 20 Failure of application
- 21 Observations by third party on patentability

## **Security and safety**

- 22 Information prejudicial to defence of realm or safety of public
- 23 Restrictions on applications abroad by United Kingdom residents

## **Provisions as to patents after grant**

- 24 Publication and certificate of grant
- 25 Term of patent
- 26 Patent not to be impugned for lack of unity
- 27 General power to amend specification after grant
- 28 Restoration of lapsed patents
- 28A Effect of order for restoration of patent

- 29 Surrender of patents

### **Property in patents and applications, and registration**

- 30 Nature of, and transactions in, patents and applications for patents
- 32 Register of patents, etc.
- 33 Effect of registration, etc, on rights in patents
- 34 Rectification of register
- 36 Co – ownership of patents and applications for patents
- 37 Determination of right to patent after grant
- 38 Effect of transfer of patent under s 37

### **Employees' inventions**

- 39 Right to employees' inventions
- 40 Compensation of employees for certain inventions
- 41 Amount of compensation
- 42 Enforceability of contracts relating to employees' inventions
- 43 Supplementary

### **Contract as to patented products, etc**

- 44 Avoidance of certain restrictive conditions
- 45 Determination of parts of certain contracts

### **Licences of right and compulsory licences**

- 46 Patentee's application for entry in register that licences are available as of right
- 47 Cancellation of entry made under s 46
- 48 Compulsory licences
- 49 Provisions about licences under s 48
- 50 Exercise of powers on applications under s 48
- 51 Powers exercisable in consequence of report of Monopolies and Mergers Commission
- 52 Opposition, appeal and arbitration
- 53 Compulsory licences; supplementary provisions
- 54 Special provisions where patented invention is being worked abroad

## **Use of patented inventions for services of the Crown**

- 55 Use of patented inventions for services of the Crown
- 56 Interpretation, etc, of provisions about Crown use
- 57 Rights of third parties in respect of Crown use
- 57A Compensation for loss of profit
- 58 References of disputes as to Crown use
- 59 Special provisions as to Crown use during emergency

## **Infringement**

- 60 Meaning of infringement
- 61 Proceedings for infringement of patent
- 62 Restrictions on recovery of damages for infringement of patent
- 63 Relief for infringement of partially valid patent
- 64 Right to continue use begun before priority date
- 65 Certificate of contested validity of patent
- 66 Proceedings for infringement by a co – owner
- 67 Proceedings for infringement by exclusive licensee
- 68 Effect of non – registration on infringement proceedings
- 69 Infringement of rights conferred by publication of application
- 70 Remedy for groundless threats of infringement proceedings
- 71 Declaration or declarator as to non – infringement

## **Revocation of patents**

- 72 Power to revoke patents on application
- 73 Comptroller's power to revoke patents on his own initiative

## **Putting validity in issue**

- 74 Proceedings in which validity of patent may be put in issue

## **General provisions as to amendment of patents and applications**

- 75 Amendment of patent in infringement or revocation proceedings
- 76 Amendments of applications and patents not to include added matter

## **PART II**

### **PROVISIONS ABOUT INTERNATIONAL CONVENTIONS**

#### **European patents and patent applications**

- 77 Effect of European patent (UK)
- 78 Effect of filing an application for a European patent (UK)
- 79 Operation of s 78 in relation to certain European patent applications
- 80 Authentic text of European patents and patent applications
- 81 Conversion of European patent applications
- 82 Jurisdiction to determine questions as to right to a patent
- 83 Effect of patent decisions of competent authorities of other states

#### **Community patents**

- 86 Implementation of Community Patent Convention
- 87 Decisions on Community Patent Convention

#### **International applications for patents**

- 89 Effect of international application for patent
- 89A International and national phases of application
- 89B Adaptation of provisions in relation to international application

#### **Convention countries**

- 90 Orders in Council as to convention countries

#### **Miscellaneous**

- 91 Evidence of conventions and instruments under conventions
- 92 Obtaining evidence for proceedings under the European Patent Convention
- 93 Enforcement of orders for costs
- 94 Communication of information to the European Patent Office, etc
- 95 Financial provisions

## **PART III MISCELLANEOUS AND GENERAL**

### **Legal proceedings**

- 97 Appeals from the comptroller
- 99 General powers of the court
- 99A Power of Patents Court to order report
- 100 Burden of proof in certain cases
- 101 Exercise of comptroller's discretionary powers
- 102 Right of audience, & c in proceedings before comptroller
- 102A Right of audience, & c in proceedings on appeal from the comptroller
- 103 Extension of privilege for communications with solicitors relating to patent proceedings
- 106 Costs and expenses in proceedings before the Court under s 40
- 107 Costs and expenses in proceedings before the comptroller
- 108 Licences granted by order of comptroller

### **Offences**

- 109 Falsification of register, etc
- 110 Unauthorised claim of patent rights
- 111 Unauthorised claim that patent has been applied for
- 112 Misuse of title "Patent Office"
- 113 Offences by corporations

### **Immunity of department**

- 116 Immunity of department as regards official acts

### **Administrative provisions**

- 117 Correction of errors in patents and applications
- 118 Information about patent applications and patents, and inspection of documents
- 119 Service by post
- 120 Hours of business and excluded days
- 121 Comptroller's annual report

## Supplemental

- 122 Crown's right to sell forfeited articles
- 123 Rules
- 124 Rules, regulations and orders; supplementary
- 125 Extent of invention
- 125A Disclosure of invention by specification: availability of samples of micro – organisms
- 126 Stamp duty
- 127 Existing patents and applicatons
- 128 Priorities between patents and applications under 1949 Act and this Act
- 129 Application of Act to Crown
- 130 Interpretation
- 131 Northern Ireland
- 132 Short title, extent, commencement, consequential amendments and repeals

## SCHEDULES:

- Schedule 1 – Application of 1949 Act to Existing Patents and Applications
- Schedule 2 – Application of this Act to Existing Patents and Applications
- Schedule 3 – Repeals of Provisions of 1949 Act
- Schedule 4 – Transitional Provisions
- Schedule 6 – Enactments Repealed

## 美國

美國憲法頒布前，已經有美國殖民地以及州授專利。第一個專利係於1641年，由麻薩諸塞州普通法院授與撒母耳溫斯羅之製鹽新法專利。1646年，該院復授與約瑟金克斯以製造大鐮刀機專利，此乃第一個機械專利。此一時期，美國尚無專利法可言，每一發明者，必須就個案向殖民地或州主管機關提出特別申請，再依特別法案頒給專利。其專利權只受各該殖民地或州之保護。1787年，各州代表聚集費城草擬憲法時，維吉尼亞州及南卡羅萊納州代表提議以專利制度保護發明人。因為專利制度本身，不僅在於保護發明者個人，同時更能使社會大眾受益。因此1787年制憲委員會幾無異議地授權國會確保發明人享有一定期間之獨占權，以促進科學及有用技術之發展。美國第一部專利法遂根據該條款於1790年2月16日由國會通過，同年4月10日經華盛頓總統簽署成為法律，為美國現代專利制度奠定基礎。

其相關法律包括：

1790年 The Act of 1790

1793年 The Act of 1793

1952年 Patnet Act

1975年 Patnet Act

1980年 Stevenson – Wylder Technology Innovation ACT

1980年 Bayh – Dole Act

(The Patent and Trademark Act)

1984年 The Patent Law Amendments Act

1986年 Federal Technology Transfer Act

1988年 The Technology Competitiveness Act

1989年 National Competitiveness Technology Transfer Act

1992年 American Technology Pre – Eminence Act

1993年 Patent and Trademark Office Authorization Act

### 1984年專利法 ( Patent Law Amendments Act) 條文要旨

#### TITLE I – PATENT IMPROVEMENT PROVISIONS

Sec. 101 Use of patented inventions outside the United States

Sec. 102 Statutory invention registration

Sec. 103 Prior art

Sec. 104 Joint inventors

Sec. 105 Arbitration of interferences

Sec. 106 Effective date



## TITLE II – PATENT AND TRADEMARK OFFICE PROCEDURES

- Sec. 201 Board of patent appeals and interferences
- Sec. 202 Interferences
- Sec. 203 Appeals and civil actions
- Sec. 204 Technical and conforming amendments
- Sec. 205 Amendments to other provisions of law
- Sec. 206 Savings provision
- Sec. 207 Effective date

## TITLE III – NATIONAL COMMISSION ON INNOVATION AND PRODUCTIVITY

- Sec. 301 Establishment
- Sec. 302 Membership of commission
- Sec. 303 Duties of the commission
- Sec. 304 Compensation of members of the commission
- Sec. 305 Director and staff
- Sec. 306 Government agency cooperation
- Sec. 307 Report of the commission; termination
- Sec. 308 Administrative services
- Sec. 309 Authorization of appropriations
- Sec. 310 Effective date

## TITLE IV – MISCELLANEOUS PROVISIONS

- Sec. 401 International stage
- Sec. 402 National stage
- Sec. 403 Technical amendments
- Sec. 404 Patent fees
- Sec. 405 Trademark trial and appeal board
- Sec. 406 Effective date

## 參考書目：

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9. Patnet office rules and practice (608/S458)
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