

Patent Law of the United Kingdom

Texts, Commentary and Notes on
Practice by
THE CHARTERED INSTITUTE
OF PATENT AGENTS

Being a Revised Edition of
THE PATENTS ACTS 1949-1961
(*Second Edition 1968—Annual Supplements to 1974*)



Sweet & Maxwell

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DEDICATION

THIS edition is dedicated to the memory of Cecil Every, a Past President of the Chartered Institute of Patent Agents, who rendered great service to the Institute over many years. He was a member of the Committee which produced the first edition and was Chairman of the Committee which produced the second edition and the first to seventh cumulative Supplements of the Commentary. The high reputation which it is believed the Commentary now enjoys is largely due to his enthusiasm and hard work freely and anonymously given over many years.

PREFACE

THE second edition of this book was published in 1968 and supplements have been issued, the last being the seventh cumulative Supplement, up to date to January 1, 1974. Stocks of the book are now exhausted, and the amount of material in the Supplement is considerable. Consequently the Council of the Institute has agreed with a request by the publishers that a new edition of the book itself should be prepared.

This new edition is essentially a compilation of the second edition and the seventh cumulative Supplement. The Fellows of the Institute to whom the work of compilation was entrusted by the Council hope that the third edition will usefully take the place of the second, for the same purposes, in the hands of practising patent agents and their assistants, and perhaps in a wider field.

The broad aim, as before, has been to provide a manual for reference, if not daily, at least whenever any doubt arises on the provisions of the Act or Rules and above all on the practice under them.

Just as the text of this book was ready for printing the British Government issued a Green Paper on *Patent Law Reform* which envisaged revision of British laws in a number of respects. However, the date on which such revision will take effect is necessarily some distance off and the book should be of value for many years to come. Most importantly, the Green Paper states that the Act of 1949, with the amendments up to 1975 as dealt with in this book, will continue to apply to all patents granted before the date of law revision, and to all applications pending at that date and all patents granted on such applications.

The Institute Transactions and the magazine "CIPA" are a mine of information on many topics, but one in which few people dig unless they happen to remember some particular paper. Reference is made under many sections to papers and the discussions on them which throw light on the meaning of, or practice under, the section, though mainly only the papers read in 1949 and thereafter are referred to.

Reference is also made to a very large number of cases decided under the 1949 Act, and to a few decided before it. To mention all might have been the ideal; it might also have resulted in Commentaries of such length as to deter the busy practitioner from referring to them. The principle adopted by the compilers has been to refer to each case which appeared to them to throw any real light on the interpretation of a section, and to make as brief a comment as possible while yet leading the reader to look at any judgment that might affect his action in drafting or advising. The compilers have concluded that very few of the cases discussed in the second edition or its Supplements have become out of date or overruled. Consequently

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they have retained the majority, despite the consequent increase in bulk, notably in relation to oppositions. The decided cases taken into account are all those reported up to December 31, 1973. So far as possible, RPC references have been given, but some of the cases mentioned have been reported only in the *Fleet Street Patent Law Reports* and the FSR references to these are accordingly given. Where a case, previously reported in FSR in 1973, has been reported in RPC in 1974, then the RPC reference has been given. For convenience, the titles of cases have in many cases been abbreviated.

Some notices in the *Official Journal* (Patents) are quoted, and in other cases mentioned with the O.J. references.

The 1949 Act has been amended by a considerable number of Acts and Orders, as listed on page 1. Since the book is intended to be a reference manual rather than an historical treatise, the sections are printed as at December 31, 1974, but the fact that a section has been amended is mentioned in the Commentary on that section. As in the previous book, each section (with the exception of the amended sections) is printed in form identical, line by line, with that in the Queen's Printer's copy.

The compilers have had considerable difficulty tracking down legislation which, though not primarily relating to Patents, has had an effect on the 1949 Act. They have incorporated all amendments of which they are aware up to the end of 1974. For the sake of elegance they have referred to "Her Majesty" throughout the text of the Act, even though this may not be strictly correct as a matter of legislative history.

The "Board of Trade" is referred to repeatedly throughout the Act. It seems that the sections concerned have never been explicitly amended. Readers should simply note that, at the time of writing, the powers and duties which were formerly those of the Board of Trade now lie with the Department of Trade. Readers interested in constitutional law are referred to the Secretary of State for Trade and Industry Order 1970 and to the Secretary of State (New Departments) Order 1974.

For completeness the compilers have included section VI of the Statute of Monopolies, and some surviving sections of the 1907 Act (including those which provide the legal basis for the existence of the Patent Office and of the Comptroller).

The last consolidated Patents Rules are those of 1968, and they have also been amended. They are printed in full in their amended form (as at December 31, 1974). In addition, the rules relevant to each section are printed beneath it, likewise in their amended form. The Patents Appeal Tribunal Rules and the Register of Patent Agents Rules are also printed in their current form.

Readers should note that the fees given in Schedule 1 to the Patents Rules are those established in May 1974 by the Patents (Amendment) Rules 1974.

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Underneath the more important sections the comments are divided into two parts, headed "Commentary" and "Practice." The dividing line has sometimes been found difficult, but broadly the "Commentary" attempts, by reference to decided cases, to throw light on the meaning of the section, and "Practice" aims at giving as much useful information on how to proceed as the compilers have been able to discover. In some instances the compilers have ventured to go further, and give not only information but also advice based on their collective experience. They hope that they will not be thought presumptuous in this.

On various topics comments could be made almost equally appropriately under more than one section. It has been thought better to insert cross-references rather than to duplicate comments; if a reader does not find what he wants under the section he turns to, he may find a cross-reference which will lead him to it. Sections 14 and 33 require particular mention. Essentially all the discussion on opposition, including comments based on various decisions in belated oppositions, is to be found in the Commentary under section 14.

When a section both clearly speaks for itself and seems to be of little practical importance, no Commentary has been written.

The index refers not to the sections but to the pages in which any matter is referred to under Commentary or Practice, unless there is no related Commentary or Practice. The broad subject-matter of each section, given at the beginning of the Act, is reproduced on pages 1 to 3 and should thus form an adequate index to the sections. Each page is headed with the section number so that any section should easily be found on turning over the pages.

As far as possible the terms used in the index have been chosen as those in common use by patent agents, examples being "prior claiming," now more commonly used than "prior grant," and "cognating" which (although pure jargon) is much in use.

It is the intention to keep this edition up to date by the periodic issue of Supplements. In these any mistakes that may be found in the book can be corrected, so the compilers will be grateful if readers will notify the Institute of matter they consider wrong.

The compilers have received assistance from many people and they gratefully acknowledge all of it.

June 1, 1975.

Publishers' Note

IN order to keep this work up to date and thus make it of greater value to readers, Supplements will be issued annually.

The first Supplement is published with this book at no extra cost. It deals with those events during 1974, which could not be included in the book itself owing to the need to complete the text well before the intended publication date. The second cumulative Supplement will be published early in 1976 at a price to be fixed.

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