

## How the Intellectual Property Act 2014 changes British Patent Law



Jane Lambert  
Barrister

4-5 Gray's Inn Square  
020 7404 5252  
jlambert@4-5.co.uk  
21 June 2014

A patent is a monopoly of a new invention. It is granted as a reward for disclosing the invention to the public. There is no statutory definition of "invention" but s.60 (1)<sup>1</sup> of the Patents Act 1977 refers only to products and processes. A patent for a product is infringed by making, disposing of, offering to dispose of, using, importing the patented product or keeping it whether for disposal or otherwise. A patent for a process is infringed by using the process or disposing off, offering to dispose of, importing, using or keeping a product made from the process. To qualify for a patent an invention must be new, inventive and useful and fall outside a number of statutory exclusions. Patents for the United Kingdom are granted by the Intellectual Property Office ("IPO")<sup>2</sup> in Newport or the European Patent Office ("EPO")<sup>3</sup> in Munich. Patents granted by the EPO ("European patents") are granted for individual countries and stand alongside those granted by national patent offices. There is not yet such a thing as a worldwide patent or even a patent for the whole EU but there is an international agreement known as the Patent Cooperation Treaty ("PCT")<sup>4</sup> that facilitates patent applications for more than once country.

### The Hargreaves Review

In November 2010 the Prime Minister commissioned Professor Ian Hargreaves<sup>5</sup> to consider whether laws designed more than 300

years ago with the express purpose of creating economic incentives for innovation by protecting creators' rights are today obstructing innovation and economic growth?<sup>6</sup> Professor Hargreaves replied that the short answer was "yes"<sup>7</sup> and made 10 recommendations for improving the intellectual property framework all of which were accepted by HM Government. They included attaching "the highest immediate priority to achieving a unified EU patent court and EU patent system"<sup>8</sup> and taking "a leading role in promoting international efforts to cut backlogs and manage the boom in patent applications by further extending 'work sharing' with patent offices in other countries." Implementation of those recommendations alone required primary legislation.

### Intellectual Property Act 2014

On 10 May 2013 Lord Younger introduced the Intellectual Property Bill<sup>9</sup> into the House of Lords. With the exception of clause 13 which created a new offence of intentionally copying a registered or registered Community design, most of its provisions were uncontroversial. The Bill received royal assent on 14 May 2014 with very few amendments. The Act consists of 24 sections and a schedule. Part I is concerned with registered and unregistered designs, Part II with patents, Part III with miscellaneous matters and Part IV with commencement and rule making. I have already discussed the changes to registered and unregistered design law in *How the Intellectual Property Act 2014 changes British Registered Design Law*<sup>10</sup> and *How the Intellectual Property Act 2014 will change British Unregistered Design Right Law*<sup>11</sup>. In addition to facilitating the Unitary Patent and Unified Patent Court and work sharing with other patent offices, Part II enables the Secretary of State to extend the Patent opinions service, makes a number of changes to the Patents Act 1977 and amends the Freedom of Information Act 2000 to exempt certain information on ongoing research from disclosure requirements under the Act.

### Unified Patent Court

It has not yet been possible for all the member states of the European Union to reach agreement on an EU patent but on the 19 Dec 2012 all the member states except Spain and Italy agreed two regulations<sup>12</sup> that will enable the EPO to grant

<sup>1</sup> "Meaning of infringement

60.-(1) Subject to the provisions of this section, a person infringes a patent for an invention if, but only if, while the patent is in force, he does any of the following things in the United Kingdom in relation to the invention without the consent of the proprietor of the patent, that is to say -  
(a) where the invention is a product, he makes, disposes of, offers to dispose of, uses or imports the product or keeps it whether for disposal or otherwise;  
(b) where the invention is a process, he uses the process or he offers it for use in the United Kingdom when he knows, or it is obvious to a reasonable person in the circumstances, that its use there without the consent of the proprietor would be an infringement of the patent;  
(c) where the invention is a process, he disposes of, offers to dispose of, uses or imports any product obtained directly by means of that process or keeps any such product whether for disposal or otherwise."

<http://www.ipo.gov.uk/patentsact1977.pdf>

<sup>2</sup> <http://www.ipo.gov.uk/>

<sup>3</sup> <http://www.epo.org/index.html>

<sup>4</sup> <http://www.wipo.int/pct/en/texts/articles/atoc.htm>

<sup>5</sup> Professor of Digital Economy of Cardiff University  
<http://www.cardiff.ac.uk/jomec/contactsandpeople/profiles/hargreaves-ian.html>

<sup>6</sup> Foreword of *Digital Opportunity - A Review of Intellectual Property and Growth*. May 2011

<http://www.ipo.gov.uk/ipreview-finalreport.pdf>

<sup>7</sup> *Ibid*

<sup>8</sup> Part of recommendation no. 2.

<sup>9</sup> <http://www.publications.parliament.uk/pa/bills/lbill/2013-2014/0005/2014005.pdf>

<sup>10</sup> JD Supra 19 June 2014

<http://www.jdsupra.com/legalnews/how-the-intellectual-property-act-2014-c-94062/>

<sup>11</sup> JD Supra 11 June 2014

<http://www.jdsupra.com/legalnews/how-the-intellectual-property-act-2014-w-01291/>

<sup>12</sup> Regulation (EU) No 1257/2012 of the European Parliament and of the Council of 17 December 2012

European patents for the territories of all those countries as though they were a single state which will be known as “unitary patents”. On 19 Feb 2013 most of the EU member states that had accepted those regulations plus Italy agreed<sup>13</sup> to establish a Unified Patent Court which will have jurisdiction to determine European patent disputes within their territories. The Court will consist of a Court of First Instance in Paris with sections in London and Munich and a Court of Appeal in Luxembourg. The Court already has a website<sup>14</sup> and a preparatory committee has been formed to prepare the way for the new tribunal.

S.17 of the Intellectual Property Act 2014 inserts the following new sections into the Patents Act 1977:

“*Unified Patent Court*

### **88A Implementation of Agreement on a Unified Patent Court**

(1) The Secretary of State may by order make provision for giving effect in the United Kingdom to the provisions of the Agreement on a Unified Patent Court made in Brussels on 19 February 2013.

(2) An order under this section may, in particular, make provision—

(a) to confer jurisdiction on a court, remove jurisdiction from a court or vary the jurisdiction of a court;

(b) to require the payment of fees.

(3) An order under this section may also make provision for varying the application of specified provisions of this Act so that they correspond to provision made by the Agreement.

(4) An order under this section may—

(a) make provision which applies generally or in relation only to specified cases;

(b) make different provision for different cases.

(5) An order under this section may amend this Act or any other enactment.

---

implementing enhanced cooperation in the area of the creation of unitary patent protection OJ 31.12.2012 L 361/1 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:361:0001:0008:EN:PDF> and Council Regulation (EU) No 1260/2012 of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements OJ 31.12.2012 L 361/89 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:361:0089:0092:EN:PDF>

<sup>13</sup> Agreement on a Unified Patent Court (2013/C 175/01) OJ 20.6.2013 C 175/1 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:175:0001:0040:EN:PDF>

<sup>14</sup> <http://unified-patent-court.org/>

(6) An order under this section may not be made unless a draft of the order has been laid before, and approved by resolution of, each House of Parliament.

(7) The meaning of “court” in this section is not limited by the definition of that expression in section 130(1).

### **88B Designation as international organisation of which UK is member**

The Unified Patent Court is to be treated for the purposes of section 1 of the International Organisations Act 1968 (organisations of which the United Kingdom is a member) as an organisation to which that section applies.”

The IPO has already begun consultation on the legislation to be made pursuant to s.88A (1) and has inserted a draft statutory instrument into its *Technical Review and Call for Evidence on Secondary Legislation Implementing the Agreement on a Unified Patent Court and EU Regulations Establishing the Unitary Patent*<sup>15</sup>. The consultation on the proposed Order in Council which will change primary legislation will close on 2 Sep 2014<sup>16</sup>.

### **Work Sharing with Overseas Patent Offices**

With a number of exceptions that are set out in s.118 (3) of the Patents Act 1977, s.118 (2) prevents the publication or disclosure of information or documents relating to a patent application until after the application is published in accordance with s.16 of the Act. S.18 (1) of the Intellectual Property Act 2014<sup>17</sup> would add to those exceptions by inserting a new paragraph (aa) into s.118 (3). The subsection will therefore read as follows:

(3) Subsection (2) above shall not prevent the comptroller from -

(a) sending the European Patent Office information which it is his duty to send that office in accordance with any provision of the European Patent Convention;

(aa) sending any patent office outside the United Kingdom such information about unpublished applications for patents as that office requests; or

(b) publishing or communicating to others any prescribed bibliographic information about an unpublished application for a patent;

nor shall that subsection prevent the Secretary of State from inspecting or authorising the inspection

---

<sup>15</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/318769/Consultation\\_Technical\\_Review\\_Unified\\_Patents\\_Court.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/318769/Consultation_Technical_Review_Unified_Patents_Court.pdf)

<sup>16</sup> <https://www.gov.uk/government/consultations/secondary-legislation-implementing-the-unified-patent-court>

<sup>17</sup> <http://www.legislation.gov.uk/ukpga/2014/18/section/18/enacted>

of an application for a patent or any connected documents under section 22(6) above.”

S.18 (2) and (3) of the 2014 Act insert the following new subsections after s.118 (3) of the Patents Act 1977:

(3A) Information may not be sent to a patent office in reliance on subsection (3) (aa) otherwise than in accordance with the working arrangements that the comptroller has made for that purpose with that office.

(3B) Those arrangements must include provision for ensuring that the confidentiality of information of the kind referred to in subsection (3) (aa) sent by the comptroller to the patent office in question is protected.

(3C) The reference in subsection (3) (aa) to a patent office is to an organisation which carries out, in relation to patents, functions of the kind carried out at the Patent Office.”

These provisions will at least remove one of the excuses for delay in processing patent applications by British applicants.

### Opinions Service

S.13 (1) of the Patents Act 2004 inserted a new s.74A<sup>18</sup> and a new s.74B<sup>19</sup> into the Patents Act

---

<sup>18</sup> “Opinions by Patent Office

#### 74A Opinions as to validity or infringement

(1) The proprietor of a patent or any other person may request the comptroller to issue an opinion—  
(a) as to whether a particular act constitutes, or (if done) would constitute, an infringement of the patent;  
(b) as to whether, or to what extent, the invention in question is not patentable because the condition in section 1(1) (a) or (b) above is not satisfied.

(2) Subsection (1) above applies even if the patent has expired or has been surrendered.

(3) The comptroller shall issue an opinion if requested to do so under subsection (1) above, but shall not do so—  
(a) in such circumstances as may be prescribed, or  
(b) if for any reason he considers it inappropriate in all the circumstances to do so.

(4) An opinion under this section shall not be binding for any purposes.

(5) An opinion under this section shall be prepared by an examiner.

(6) In relation to a decision of the comptroller whether to issue an opinion under this section—

(a) for the purposes of section 101 below, only the person making the request under subsection (1) above shall be regarded as a party to a proceeding before the comptroller; and  
(b) no appeal shall lie at the instance of any other person.”

<sup>19</sup> “74B Reviews of opinions under section 74A

(1) Rules may make provision for a review before the comptroller, on an application by the proprietor or an exclusive licensee of the patent in question, of an opinion under section 74A above.

(2) The rules may, in particular—

(a) prescribe the circumstances in which, and the period within which, an application may be made;

1977 which enable anyone to request an examiner’s opinion as to whether a patent is valid or whether it has been infringed. The cost of obtaining such an opinion is £200 which is a fraction of the costs of an opinion from counsel and in some cases more accurate since the examiner often has the benefit of argument and evidence from both sides.

The service has proved to be very popular as can be seen from the number of requests over the last decade<sup>20</sup> but it has three limitations:

- (1) opinions can only be issued for matters that fall within the scope of s.74A (1) of the Patents Act 1977;
- (2) they cannot be obtained in relation to supplementary protection certificates; and
- (3) the Comptroller-General of Patents, Designs and Trade Marks has no power to revoke a patent that an examiner believes to be invalid.

S.16 (1) addresses the first of those limitations by amending s.74A (1) to enable the Secretary of State to make regulations to broaden the scope of issues upon which an opinion can be sought. S.74A (1) will therefore read as follows:

#### “74A *Opinions on matters prescribed in the rules*

(1) The proprietor of a patent or any other person may request the comptroller to issue an *opinion on a prescribed matter in relation to the patent*”.

The second limitation is met by s.16 (3) of the 2014 Act by inserting the words “sections 74A and 74B (opinions by the Patent Office)” into paragraph 1 (2) of Sched. 4A to the Patents Act 1977 which applies certain provisions of that Act to supplementary protection certificates.

The last of those limitations is addressed by s.16 (4) of the Intellectual Act 2014 which inserts the following new subsections into s.73 of the Patents Act 1977:

“(1A) Where the comptroller issues an opinion under section 74A that section 1(1)(a) or (b) is not satisfied in relation to an invention for which there is a patent, the comptroller may revoke the patent.

(1B) The power under subsection (1A) may not be exercised before—

---

(b) provide that, in prescribed circumstances, proceedings for a review may not be brought or continued where other proceedings have been brought;

(c) make provision under which, in prescribed circumstances, proceedings on a review are to be treated for prescribed purposes as if they were proceedings under section 61(1)(c) or (e), 71(1) or 72(1)(a) above;

(d) provide for there to be a right of appeal against a decision made on a review only in prescribed cases.”

<sup>20</sup> <http://www.ipo.gov.uk/pro-types/pro-patent/pro-p-dispute/pro-p-opinion.htm>

(a) the end of the period in which the proprietor of the patent may apply under the rules (by virtue of section 74B) for a review of the opinion, or

(b) if the proprietor applies for a review, the decision on the review is made (or, if there is an appeal against that decision, the appeal is determined).

(1C) The comptroller shall not exercise the power under subsection (1A) without giving the proprietor of the patent an opportunity to make any observations and to amend the specification of the patent without contravening section 76.”

Finally, s.16 (2) repeals s.77B (2) (c) as that rule making power has never been used and is unlikely to be used in the future.

### Changes to the Patents Act 1977

S.62 (1) of the Patents Act 1977 provides that neither an inquiry as to damages nor an account of profits can be ordered against a defendant who proves that at the date of the infringement he was not aware, and had no reasonable grounds for supposing, that the patent existed. The subsection continues that “a person shall not be taken to have been so aware or to have had reasonable grounds for so supposing by reason only of the application to a product of the word “patent” or “patented”, or any word or words expressing or implying that a patent has been obtained for the product, unless the number of the patent accompanied the word or words in question.” S.15 (1) of the 2014 Act extends that exception by inserting the words “or a relevant internet link” after “the number of the patent.” S.15 (2) adds a new subsection (1A):

“(1A) The reference in subsection (1) to a relevant internet link is a reference to an address of a posting on the internet—

(a) which is accessible to the public free of charge, and

(b) which clearly associates the product with the number of the patent.”

S.19 and the Schedule to the Intellectual Property Act 2014 make the following minor amendments to the Patents Act 1977:

- Para 1 of the Schedule makes the italicized amendments to s.5<sup>21</sup> that appear in the footnote;

---

<sup>21</sup> Priority date

5.-(1) For the purposes of this Act the priority date of an invention to which an application for a patent relates and also of any matter (whether or not the same as the invention) contained in any such application is, except as provided by the following provisions of this Act, the date of filing the application.

(2) If in or in connection with an application for a patent (the application in suit) a declaration is made, whether by the applicant or any predecessor in title of his, complying with the relevant requirements of rules and specifying one or more earlier relevant applications for the purposes of

---

this section made by the applicant or a predecessor in title of his and the application in suit has a date of filing during the period allowed under subsection (2A)(a) or (b) below, then -

(a) if an invention to which the application in suit relates is supported by matter disclosed in the earlier relevant application or applications, the priority date of that invention shall instead of being the date of filing the application in suit be the date of filing the relevant application in which that matter was disclosed, or, if it was disclosed in more than one relevant application, the earliest of them;

(b) the priority date of any matter contained in the application in suit which was also disclosed in the earlier relevant application or applications shall be the date of filing the relevant application in which that matter was disclosed or, if it was disclosed in more than one relevant application, the earliest of them.

(2A) The periods are -

(a) the period of twelve months immediately following the date of filing of the earlier specified relevant application, or if there is more than one, of the earliest of them; and

(b) where the comptroller has given permission under subsection (2B) below for a late declaration to be made under subsection (2) above, the period commencing immediately after the end of the period allowed under paragraph (a) above and ending at the end of the prescribed period.

(2B) The applicant may make a request to the comptroller for permission to make a late declaration under subsection (2) above.

(2C) The comptroller shall grant a request made under subsection (2B) above if, and only if -

(a) the request complies with the relevant requirements of rules; and

(b) the comptroller is satisfied that the applicant's failure to file the application in suit within the period allowed under subsection (2A)(a) above was unintentional.

(3) Where an invention or other matter contained in the application in suit was also disclosed in two earlier relevant applications filed by the same applicant as in the case of the application in suit or a predecessor in title of his and the second of those relevant applications was specified in or in connection with the application in suit, the second of those relevant applications shall, so far as concerns that invention or matter, be disregarded unless -

(a) it was filed in or in respect of the same country as the first; and

(b) not later than the date of filing the second, the first (whether or not so specified) was unconditionally withdrawn, or was abandoned or refused, without -

(i) having been made available to the public (whether in the United Kingdom or elsewhere);

(ii) leaving any rights outstanding; and

(iii) having served to establish a priority date in relation to another application, wherever made.

(4) The foregoing provisions of this section shall apply for determining the priority date of an invention for which a patent has been granted as they apply for determining the priority date of an invention to which an application for that patent relates.

(5) In this section “relevant application” means any of the following applications which has a date of filing, namely -

(a) an application for a patent under this Act;

(aa) *an application in or for a country (other than the United Kingdom) which is a member of the World Trade Organisation for protection in respect of an invention which, in accordance with the law of that country or a treaty or international obligation to which it is a party, is equivalent to an application for a patent under this Act;*

(b) an application in or for a convention country (specified under section 90 below) for protection in respect of an invention or an application which, in accordance with the law of a convention country or a treaty or international

- Para 2 inserts a new subsection (4A) into s.20B and the wording of the section is as set out in the footnote<sup>22</sup>;
- Para 3 amends s.37<sup>23</sup>, s.72 (2) (b)<sup>24</sup> and s.74 (4) (b)<sup>25</sup> in accordance with the italicized text in the

---

convention to which a convention country is a party, is equivalent to *an application for a patent under this Act.*

(6) .....

<sup>22</sup> **“Effect of reinstatement under section 20A**

20B.-(1) The effect of reinstatement under section 20A of an application for a patent is as follows.

(2) Anything done under or in relation to the application during the period between termination and reinstatement shall be treated as valid.

(3) If the application has been published under section 16 above before its termination anything done during that period which would have constituted an infringement of the rights conferred by publication of the application if the termination had not occurred shall be treated as an infringement of those rights –

(a) if done at a time when it was possible for the period referred to in section 20A(1) above to be extended, or

(b) if it was a continuation or repetition of an earlier act infringing those rights.

(4) If the application has been published under section 16 above before its termination and, after the termination and before publication of notice of the request for its reinstatement, 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 termination 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 reinstatement 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.

*(4A) The right conferred by subsection (4) does not become exercisable until the end of the period during which a request may be made under this Act, or under the rules, for an extension of the period referred to in section 20A(1).*

(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 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.

(6A) The above provisions apply in relation to the use of a patented invention for the services of the Crown as they apply in relation to infringement of the rights conferred by publication of the application for a patent (or, as the case may be, infringement of the patent).

“Patented invention” has the same meaning as in section 55 below.

(7) In this section “termination”, in relation to an application, means -

(a) the refusal of the application, or

(b) the application being treated as having been refused or withdrawn.”

<sup>23</sup> **“Determination of right to patent after grant**

---

37.-(1) After a patent has been granted for an invention any person having or claiming a proprietary interest in or under the patent may refer to the comptroller the question- (a) who is or are the true proprietor or proprietors of the patent,

(b) whether the patent should have been granted to the person or persons to whom it was granted, or

(c) whether any right in or under the patent should be transferred or granted to any other person or persons; and the comptroller shall determine the question and make such order as he thinks fit to give effect to the determination.

(2) Without prejudice to the generality of subsection (1) above, an order under that subsection may contain provision -

(a) directing that the person by whom the reference is made under that subsection shall be included (whether or not to the exclusion of any other person) among the persons registered as proprietors of the patent;

(b) directing the registration of a transaction, instrument or event by virtue of which that person has acquired any right in or under the patent;

(c) granting any licence or other right in or under the patent;

(d) directing the proprietor of the patent or any person having any right in or under the patent to do anything specified in the order as necessary to carry out the other provisions of the order.

(3) If any person to whom directions have been given under subsection (2)(d) above fails to do anything necessary for carrying out any such directions within 14 days after the date of the order containing the directions, the comptroller may, on application made to him by any person in whose favour or on whose reference the order containing the directions was made, authorise him to do that thing on behalf of the person to whom the directions were given.

(4) Where the comptroller finds on a reference under this section that the patent was granted to a person not entitled to be granted that patent (whether alone or with other persons) and on application made under section 72 below makes an order on that ground for the conditional or unconditional revocation of the patent, the comptroller may order that the person by whom the application was made or his successor in title may, subject to section 76 below, make a new application for a patent -

(a) in the case of unconditional revocation, for the whole of the matter comprised in the specification of that patent; and

(b) in the case of conditional revocation, for the matter which in the opinion of the comptroller should be excluded from that specification by amendment under section 75 below;

and where such new application is made, it shall be treated as having been filed on the date of filing the application for the patent to which the reference relates.

(5) On any such reference no order shall be made under this section transferring the patent to which the reference relates on the ground that the patent was granted to a person not so entitled, and no order shall be made under subsection (4) above on that ground, if the reference was made *the second anniversary* of the date of the grant, unless it is shown that any person registered as a proprietor of the patent knew at the time of the grant or, as the case may be, of the transfer of the patent to him that he was not entitled to the patent.

(6) An order under this section shall not be so made as to affect the mutual rights or obligations of trustees or of the personal representatives of a deceased person, or their rights or obligations as such.

(7) Where a question is referred to the comptroller under this section an order shall not be made by virtue of subsection (2) or under subsection (4) above on the reference unless notice of the reference is given to all

footnotes to facilitate the computation of time in entitlement proceedings;

- Para 4 substitutes the words “such other person who has a right of audience” for “such other counsel” in s.52 (4) and “the other party’s legal representative” for “counsel for the other party” in s.58 (2);
- Para 5 adds the letters “EC” to “Directive 2004/28” in the definition of “Directive 2001/82/EC” in s.60 (7); and
- Para 6 adds the following new subsection to s.77:  
“(5A) Where, under the European Patent Convention, a European patent (UK) is revoked and subsequently restored (including where it is revoked by the Board of Appeal and subsequently restored by the Enlarged Board of Appeal), any fee that would have been imposed in relation to the patent after the revocation but

---

persons registered as proprietor of the patent or as having a right in or under the patent, except those who are parties to the reference.

(8) If it appears to the comptroller on a reference under this section that the question referred to him would more properly be determined by the court, he may decline to deal with it and, without prejudice to the court’s jurisdiction to determine any such question and make a declaration, or any declaratory jurisdiction of the court in Scotland, the court shall have jurisdiction to do so.

(9) The court shall not in the exercise of any such declaratory jurisdiction determine a question whether a patent was granted to a person not entitled to be granted the patent if the proceedings in which the jurisdiction is invoked were commenced after *the second anniversary of the date of the grant of the patent*, unless it is shown that any person registered as a proprietor of the patent knew at the time of the grant or, as the case may be, of the transfer of the patent to him that he was not entitled to the patent.”

<sup>24</sup>“(2) An application for the revocation of a patent on the ground mentioned in subsection (1)(b) above -

(a) may only be made by a person found by the court in an action for a declaration or declarator, or found by the court or the comptroller on a reference under section 37 above, to be entitled to be granted that patent or to be granted a patent for part of the matter comprised in the specification of the patent sought to be revoked; and

(b) may not be made if that action was commenced or that reference was made after *the second anniversary of the date of the grant of the patent sought to be revoked*, unless it is shown that any person registered as a proprietor of the patent knew at the time of the grant or of the transfer of the patent to him that he was not entitled to the patent.”

<sup>25</sup>“(4) No determination shall be made in any proceedings mentioned in subsection (1) above on the validity of a patent which any person puts in issue on the ground mentioned in section 72(1)(b) above unless -

(a) it has been determined in entitlement proceedings commenced by that person or in the proceedings in which the validity of the patent is in issue that the patent should have been granted to him and not some other person; and  
(b) except where it has been so determined in entitlement proceedings, the proceedings in which the validity of the patent is in issue are commenced *on or before the second anniversary of the date of the grant of the patent* or it is shown that any person registered as a proprietor of the patent knew at the time of the grant or of the transfer of the patent to him that he was not entitled to the patent.”

before the restoration is payable within the prescribed period following the restoration.”

## Freedom of Information Act 2000

There is some evidence that businesses have made freedom of information requests to obtain sensitive technical or commercial information about their competitors. S.20 of the Intellectual Property Act 2014 inserts a new s.22A into the Freedom of Information Act 2000n which exempts such information from disclosure:

### “22A Research

(1) Information obtained in the course of, or derived from, a programme of research is exempt information if—

(a) the programme is continuing with a view to the publication, by a public authority or any other person, of a report of the research (whether or not including a statement of that information), and

(b) disclosure of the information under this Act before the date of publication would, or would be likely to, prejudice—

(i) the programme,

(ii) the interests of any individual participating in the programme,

(iii) the interests of the authority which holds the information, or

(iv) the interests of the authority mentioned in paragraph (a) (if it is a different authority from that which holds the information).

(2) The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1) if, or to the extent that, compliance with section 1(1) (a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1) (b).”

### Consequences for Practitioners

Without a doubt the most important provision of the Act is the power to make rules implementing the Agreement on the Unified Patent Court. The establishment of the Court will enable the unitary patent to come into being which will result in massive savings in prosecution, translation and renewal costs. The Court will also effect considerable savings in enforcement costs and will give businesses certainty as to the validity of their own and their competitors’ patents throughout the EU. As the Court will have jurisdiction over all European patents and not just unitary ones it is likely to draw business from the Patents Court and other national tribunals. Also, the presence in London of a non-common law tribunal may well influence the evolution of civil procedure and the practice of litigation in the UK. ■