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# Myerson **Business**

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**Defendant's guide to patent disputes**

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# Welcome

Patents relate to inventions. They involve an application being made by an inventor giving them the right to stop anyone else from making, using or selling their invention without their permission. Patents provide inventors with a legally protectable monopoly over their inventions and protect new and innovative technical features of products and processes. They last for a limited period of 20 years in most countries.

## Why Myerson?

At Myerson, our expert patent infringement solicitors are here to listen, help you and have years of experience dealing with complex patent cases. At Myerson, we can provide swift advice if you defend a patent infringement claim. After we have reviewed your matter, we will give you all the potential options available, all of which will be discussed so you can make an informed decision. We will stand by your side throughout the remaining process, ensuring you are effectively protected and fighting for the right outcome.

We are proud to be ranked as '**Top Tier**' in the prestigious international directory **The Legal 500** and commended by The Times '**Best Law Firms 2023**'. So, you can be certain that you will receive the highest quality legal advice and that we can advise you on complex copyright issues.

Myerson are also a member of the Intellectual Property Lawyers Association (IPLA) which is an association of law firms with an established IP department. Our membership provides both us and our clients with access to a wealth of knowledge and expertise relating to intellectual property



# Patent Disputes

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## What are patents?

Patents provide inventors with a legally protectable monopoly over their inventions and protect new and innovative technical features of products and processes. They normally last for a limited period of 20 years depending on the country.

To qualify for patent protection, an invention must be:

- New;
- Involve an innovative step;
- Be capable of industrial application; and
- Not specifically excluded from protection.

To obtain a patent, an application for a patent needs to be filed; this will normally be with the patent office of the country where the inventor works. Patents can provide a high level of protection and are highly important in some industries; this is clearly seen in the case of pharmaceutical companies, who spend millions of pounds and extensive time on research and development.

The process for registering a patent is not easy and can be expensive. It also exposes a product to competitors through public disclosure of the technology behind it without the competitor breaching the patent.

## Types of patent infringement

There are two types of patent infringement:

1. Direct infringement, meaning acts done directly in relation to patented products or patented processes.
2. Indirect infringement, meaning acts done indirectly in relation to patent products or patented processes.



In regards to direct infringement, this covers activities relating to patented products, use of patented processes, offering patented processes for use and products obtained directly through patented processes.

Where the patented invention is a product, direct patent infringement occurs when the defendant:

- Makes the product;
- Disposes of the product (i.e. putting them on the market in the course of trade);
- Offers to dispose of the product;
- Uses the product;
- Imports the product; or
- Keeps the product.

Where the patented invention is a process, direct patent infringement occurs when the defendant:

- Uses the process;
- Offers the process for use in the UK and the defendant either knows, or it would be obvious to a reasonable person in the circumstances, that use of the patented process without the consent of the proprietor would be an infringement of the patent;
- Disposes of the process;
- Offers to dispose of the process;
- Imports the process; or
- Keeps the process.

A defendant may be guilty of indirect patent infringement where all of the following apply:

- The defendant supplies or offers to supply in the UK a person with any of the means relating to an essential element of the patented invention for the purpose of putting the invention into effect.
- Either the defendant knows or it must be obvious to a reasonable person in the circumstances that the means are suitable for putting, and are intended to put, the invention into effect in the UK.
- The person supplied with the information or to whom the offer is made is not a licensee or another person entitled to work on the relevant invention.



# Defending a patent infringement claim?

There are several defences available if you find yourself defending a patent infringement claim, such as:

- Your actions have been carried out in private or for non-commercial purposes. However, please note that even one commercial use of a patent will make this defence unlikely to be available.
- The relevant acts were done for experimental purposes. This defence applies even if the experiment was carried out with a potential commercial objective.
- When preparing a medicine for an individual when prescribed by a doctor or dentist.
- Acts carried out in relation to ships, aircraft and other vehicles that are temporarily or accidentally in a UK territory.
- Use of a product that has been harvested where a farmer has bought material from the patent owner or with the patent owner's consent.
- Use of animal or animal reproductive material for an agricultural purpose where the relevant material has been sold to a farmer by the patent owner or with the patent owner's consent.
- Studies, tests or trials relating to medicines for humans and animals.
- Uses that pre-date the priority date of the patent.
- The right to continue use that began in other circumstances, e.g. between the expiry of a patent and the restoration of that patent.
- Acts done with the consent of the patent owner.
- The patent owner has been involved in anti-competitive practices.
- Exhaustion of rights i.e. the resale of goods that have been placed on the market in the European Economic Area (EEA) or with the consent of the patent owner.

There may also be grounds to invalidate a patent, such as:

- Lack of novelty.
- Lack of inventiveness.
- Lack of industrial applicability.
- The patent relates to an excluded subject matter e.g. discoveries, literary, dramatic, musical or artistic works, business methods, computer programs, presentations of information and methods of treatment or diagnosis for medical conditions suffered by animals or humans.
- Being contrary to public policy or morality.
- Lack of title i.e. where a third party argues they are entitled to the patent rather than the current patent owner.



- Insufficiency i.e. where the patent specification is not clear and complete to enable the invention to be performed.
- Where there is added matter i.e. the patent specification is wider than that in the application as first published.
- The patent has been amended, and that amendment should not have been allowed.

## What happens if you breach patent law?

Any person who has committed patent infringement can be sued. Depending on the circumstances, companies and company directors can also be sued for patent infringement.

There are various remedies available to patent owners where patent infringement is proven, including:

- Obtaining an injunction restraining the defendant from committing any patent infringement;
- Obtaining a court order that the defendant deliver up or destroy any infringing product or article related to the patented product or process;
  - Damages or an account of profits relating to the infringement;
- A declaration that the claimant's patent is valid and has been infringed by the defendant; and
- Publication of the court's judgment setting out the infringement that has occurred.

Successful claimants in patent infringement claims are also normally entitled to recover their costs from an unsuccessful defendant. As a general rule, normally, 70% of costs are recoverable unless capped costs apply. Conversely, an unsuccessful claimant in patent infringement proceedings will be liable to pay the defendant's costs in successfully defending the claim.



# You're in safe hands!

If you would like further information about how we can help you with **Patent Disputes**, or if you have any questions, please don't hesitate to contact a member of our **Commercial Litigation Team** today.

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