



# Myerson Intellectual Property

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 in dealing with complex patent cases. At Myerson, we can provide you with swift advice if you find yourself defending a patent infringement claim. After we have reviewed your matter we will provide you with all of the potential options available, all of which will be discussed with you so you can make an informed decision. Throughout the remaining process we will stand by your side, making sure that 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 2019'**. So, you can be certain that you will be receiving the highest quality legal advice and that we can advise you on complex design disputes.

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.

Through our many years of service, we have developed close working relationships with trademark and patent attorneys and regularly liaise and work with them on a wide range of intellectual property issues such as patents and when disputes arise in relation to patents. These working relationships are a key element of the service we offer to our clients, and which benefits our clients.

# How We Work.

Every client and case is different, and we are here to support you every step of the way.

**Personal, Partner-Led Service.** Our experienced solicitors get to know you and your business inside out, so we can best advise you. We know that dealing with litigation can be stressful and we aim to take that stress away from you. We strive to become your trusted advisors, providing value and most of all a genuine, personal service.

**The Highest Level of Expertise.** Combining commerciality, practicality and legal expertise enables us to deal with patent disputes in the most effective way.

**Trust. You are in safe hands.** We help clients nationwide with complex patent cases, acting for businesses who are both bringing and defending patent claims. You can rest assured that our expert team knows its stuff!

Myerson is also the Manchester and Cheshire law firm member for the **MSI Global Alliance**, a top 20 ranked, leading, international association of independent professional firms. As the patent matters we deal with often involve an international element, we can call upon the expertise and knowledge of our fellow MSI members to ensure that our client's global interests are protected.



# Your Solicitors



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**The solicitors that will be working with you are specialists.**

All of the solicitors in our Intellectual Property Disputes Team are specialists and have a detailed understanding of patents and how to handle business disputes involving patents. Your matter will be handled discreetly and efficiently and overseen by Tim Norman, a Senior Partner in the Commercial Litigation team.

Your team of solicitors will provide practical advice and work with you in order to deal with your patent dispute in the best way possible. This means you can concentrate on what's important, running your business.

You can find out more about our **Intellectual Property Disputes Team by clicking [here](#).**

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# Patent Disputes

## 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 a number of 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 mean this will defence is 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 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 specification of the patent is not clear and complete in order to enable the invention to be performed.
- Where there is added matter i.e. the specification of the patent 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. Both companies and company directors can be sued for patent infringement depending on the circumstances.

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

- Obtaining an injunction restraining the defendant from committing any type of 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.



# Don't just take our word for it...

*"Myerson Solicitors LLP has a really strong IP team which is growing."*

*"The Intellectual Property Disputes Team has a lot of experience of litigating unregistered IP rights. They are very strategic and extremely thorough. The team routinely advises on a broad range of disputes relating to trademarks, copyright, patents, confidential information and data protection. They are also skilled at advising on design rights and reputation management issues and are regularly instructed by clients from the arts, media, textile and clothing sectors in the UK and internationally. They are attracting work from a broad range of clients".*

*"The team represents International Pastry Concepts LLC (a New York based pastry house which invented the Cronuts products that are sold worldwide) on various matters such as enforcing international trademarks".*

*"The team has always been exceptional in answering all my questions and help to determine what legal counsel is needed, as well as the appropriate steps to solve the issue at hand. I trust their knowledge and abilities to take care of my issues. They are easy to work with and prompt in their responses, which is important in today's fast-paced society. I would highly recommend Myerson Solicitors to anyone seeking legal counsel. I am confident in their legal expertise and the services they provide".*

*"The team has an excellent way of dealing with clients and managing cases generally, as well as good judgment – they know when to push, and when to take the victory".*

To view more Myerson reviews visit our Review Solicitors page by [clicking here](#).

# You're in safe hands!

If you would like further information about how we can help you with your patent dispute, or if you have any questions, please do not hesitate to contact a member of our Commercial Litigation Team today.

**Call: 0161 941 4000**

**Click: [myerson.co.uk](http://myerson.co.uk)**

**Email: [lawyers@myerson.co.uk](mailto:lawyers@myerson.co.uk)**



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life is rarely  
**black and  
white.**



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