

## CHAPTER 11

<p style="text-align: center;"><b>SECTION 46</b></p> <p style="text-align: center;"><b>SETTLEMENT OF TERMS OF LICENCE OF RIGHT</b></p>
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# 11 SETTLEMENT OF TERMS OF LICENCE OF RIGHT

## INTRODUCTION

11.01 When licences under a patent are available as of right, a person may apply to the Comptroller for settlement of terms of a licence, under section 46(3) and rule 62.

### Who may apply?

11.02 Any person, including the proprietor, may apply.

### Circumstances in which an application may be made

11.03 If, following a voluntary request by the proprietors under section 46(1), licences of right have been made available, an application under section 46(3) may be made if the parties cannot decide on the terms of the licence between themselves. Only one such application has been filed to date.

## FORMAL REQUIREMENTS

11.04 A Patents Form 2/77 and a draft of the licence sought are required, both in duplicate (rule 62(1)(b)). Additionally, where the proprietors have applied, a statement of the facts they rely on should be filed (rule 62(1)(a)).

### Statement Check

11.05 The Patents Form 2/77 and draft licence (and statement if the application is by the proprietors) should be checked by the B3 officer to take into account the points raised above and points raised in Chapter 2. Any defects should be brought to the attention of the applicants, referred to as the “claimants” in the proceedings (or, as appropriate, the proprietors) with a request that the appropriate changes be made. This will often need to be done before the period for the filing of the next stage of the pleadings is set. However, certain defects are of such a nature as to allow the two periods to be run concurrently.

## **STATEMENTS OF CASE**

- 11.06 A copy of the Patents Form 2/77 and draft licence should be sent to the proprietors by the Office. The proprietors (referred to as the “defendants” in the proceedings) are allowed 6 weeks from the date the application is sent to them to file a statement setting out fully the grounds of objection and to copy it direct to the applicants (rule 62(3)(b)). The claimants are then allowed 6 weeks from the date the statement is sent to them to file a counter-statement and to copy it direct to the proprietors (rule 62(4)).
- 11.07 In cases where the proprietors have filed the application, the Office copies the application to the third party. They are allowed 6 weeks from the date the application is sent to file a counter-statement setting out fully the grounds of objection and to copy it direct to the proprietors (rule 62(3)(a)).

## **FURTHER PROCEDURE**

- 11.08 See standard procedures for evidence as outlined in Chapters 1 & 3. For complex problems see Chapter 16. There is, however, one major difference with regard to evidence - the defendants, not the claimants, file the first and third rounds of evidence.