

CHAPTER 11

SECTION 46 SETTLEMENT OF TERMS OF LICENCE OF RIGHT

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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, any person may apply to the Comptroller for settlement of terms of a licence, under section 46(3).

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.

PROCEEDINGS STARTED BY PATENT PROPRIETOR

INITIAL ACTION

Formal Requirements

11.04 Follow procedures at 1.04 to 1.07.

Action by Litigation Assistant (A1)

11.05 Follow procedures at 1.08 to 1.09.

STATEMENT OF GROUNDS

What should the statement of grounds contain?

11.06 Follow procedures at 1.11 to 1.12.

What happens if the statement of grounds does not comply?

11.07 Follow procedures at 1.13 to 1.18

Serving the Statement of Grounds

11.08 Follow procedures at 1.19 to 1.20.

COUNTER-STATEMENT

11.09 Follow procedures at 1.25 to 1.26.

MANAGEMENT OF PROCEEDINGS

11.10 Follow procedures at 1.28 to 1.40.

EVIDENCE ROUNDS

11.11 Follow procedures at 1.41 to 1.53.

DECISION

11.12 Follow procedures at 1.54 to 1.56.

**PROCEEDINGS STARTED BY A PERSON OTHER THAN THE
PATENT PROPRIETOR**

MAKING AN APPLICATION

11.13 An application should be made on Patents Form 2 and should be accompanied by two copies of the draft licence the applicant proposes should be granted (see rule 89(1)).

INITIAL ACTION

Formal Requirements

11.14 Follow procedures at 1.04 to 1.07.

Action by Litigation Assistant (A1)

11.15 Follow procedures at 1.08 to 1.09.

NOTIFYING THE PATENT PROPRIETOR

11.16 The B3/B2 should notify the proprietor of the patent that an application has been made and should send a copy of the licence with the notification (see rule 89(2) and (3)). The proprietor should be given a period of six weeks to file a statement of grounds.

PECS:- Letter is created in Word and imported using manual import (doc code is LETTER-LIT)

STATEMENT OF GROUNDS

What should the statement of grounds contain?

11.17 Follow procedures at 1.11 to 1.12.

What happens if the statement of grounds does not comply?

11.18 Follow procedures at 1.13 to 1.18

What happens if the patent proprietor does not file a statement of grounds?

11.19 If the patent proprietor does not file a statement of grounds, he will be treated as supporting the applicant's case (see rule 89(5)).

Serving the Statement of Grounds

11.20 Follow procedures at 1.19 to 1.20. The patent proprietor will be the claimant and the applicant will be the defendant (see rule 89(6)).

COUNTER-STATEMENT

11.21 Follow procedures at 1.25 to 1.26.

MANAGEMENT OF PROCEEDINGS

11.22 Follow procedures at 1.28 to 1.40.

EVIDENCE ROUNDS

| 11.23 Follow procedures at 1.41 to 1.53.

DECISION

| 11.24 Follow procedures at 1.54 to 1.56.