

CHAPTER 22

<p style="text-align: center;">REVOCATION ON THE COMPTROLLER'S INITIATIVE SECTION 73(2)</p>
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22 SECTION 73(2) REVOCATION ON THE COMPTROLLER'S INITIATIVE

INTRODUCTION

22.01 This section relates to the revocation of patents on the Comptroller's initiative under section 73(2).

ACTION BY LITIGATION ASSISTANT A1

22.02. A patent examiner will send the patent file to Litigation Section asking for revocation action to commence in respect of the patent. The examiner will specify the European patent to be cited.

PECS:- The A1 receives a message from an examiner to issue a PL3.

The A3 will request the A1 to:

- make up a Litigation file (see Chapter 25) OR arrange for the application to be indexed and scanned as PECS case

The A1 will also need to:

- enter the application in the electronic ledger, the filing date is the date the file is received in the section
- make up a movement card for the case (not required if case is a PECS case).

PECS:- The A1 attaches a request for indexing and scanning to the application and sends it to the Index and Scanning section.

22.03 Where a paper file has been made up, S73(2) and the reference number should be written in red in a prominent position on the front of the file. The

file should then be passed back to the Litigation *ex parte* team.

PECS:- The new case will be placed by Index and Scanning in the Ex parte team mailbox to be actioned by a member of the ex parte team.

ACTION BY LITIGATION OFFICER A3

22.04 An EPIDOS print relating to the European patent (UK) should be obtained from the Online European Patent Register (www.epoline.org/portal/public/registerplus) (Register Plus). You should check that:

- a) the opposition period of 9 months has elapsed since the grant of the patent.
- b) there is no opposition to the grant of the European patent (UK).
- c) the European patent (UK) has designated GB status.
- d) the A3 should also ensure that the specification on file is the latest version using Register Plus and check there are no central amendment proceedings ongoing. If proceedings are ongoing, proceed as follow:-

EPC 2000 – Central Amendment Process

Following the introduction of the central limitation process, a patent may now be amended centrally at the EPO or in each individual state. On receipt of a new s73(2), the online European Patent Register should be checked to determine whether there is a request to centrally amend an EP (UK) patent. If so, you need to obtain a copy of the amendments filed at the EPO and forward these to the examiner. The examiner will consider whether the amendments, if allowed, remove the S73(2) conflict. If so, the examiner may stay the S73(2) action pending the outcome of the central amendment. If the amendment is not allowed or it does not remove the conflict, the s73(2) action may proceed.

A minute should be added to the proceedings sheet and sent to the examiner as follows:

On checking the EPO register, it appears that an application has been filed to amend the patent centrally at the EPO. The amendments are attached for you to decide whether, if allowed, these amendments remove the conflict. If so, please confirm that you wish to stay the s73(2) action pending the outcome of the centrally filed amendment. The register will be checked regularly to monitor the progress of the amendment. If the amendment does not remove the conflict, please confirm that you wish to proceed with the s73(2) action.

It the case is a PECS case, the minute should read as follows:

Please see the centrally filed amendment at the EPO on the EPO register and advise how you wish to proceed.

PECS:- Create, lock and import minute from PROSE (doc code MINUTE-LIT), then create and send a “PSM - S73(2) Central amendment filed” message to the examiner.

If the European patent (UK) has lapsed since grant, revocation action should continue (see MOPP Section 73). If an opposition to the European patent (UK) has been filed, the file should be returned to the originating examiner with a minute note to that effect.

PECS:- Create, lock and import minute from PROSE (doc code MINUTE-LIT), then create and send a “PSM – Opposition” message to DD.

22.05 You should first check that the GB patent is in force by using the OPTICS function DIS FUL.

If the patent is not in force, return the file to the originating examiner with a print of the entry. If the patent is still in force, obtain a print of the entry and place this on file.

PECS:- Create, lock and import minute from PROSE (doc code MINUTE-LIT), then create and send a “PSM – Patent not in Force” message to DD.

- 22.06 An Official Letter PL3 (see annex 1) should be issued to the patentee allowing two months for a response. This letter may be amended accordingly if central amendments have been filed at the EPO. Appropriate wording may be requested from the examiner. Use the OPTICS function DIS FUL to check the address for service as this may have changed since the patent was originally filed. A file note should be added to the proceedings sheet as follows:

PL3 issued on (insert date of PL3). B/F to (insert date - 4 months from date of PL3, and always to the nearest Wednesday)

Section 117(B) of the Patent Act 1977 provides for an additional automatic extension of two months for periods specified by the Office. This may be applied retrospectively. As a result, the case should be diaried for 2 months and 2 months from the date of the PL3 letter. The movement sheet on the front of the file should be marked with the (B/F) date. DiaryL should also be updated. A copy of the PL3 should be placed on file.

PECS:- Letter created, locked and imported from PROSE.

File note is created in Word and imported using manual import (doc code is FILE NOTE-LIT).

- 22.07 An OPTICS free text entry should be made using the function REG ENT. The entry should read:

“Section 73(2) action taken on (date of PL3), in view of EP(UK).....”.

A DIS FUL print should be obtained and filed at the front of the file.

RESPONSE TO OFFICIAL LETTER PL3

No objection to revocation

22.08 If a response is received to the PL3 that states that the patentee has no objection to the revocation of the patent, the letter should be placed on file and a decision 3 (see annex 5) prepared for the appropriate Deputy Director to sign. Once the decision has been signed, a copy should be issued to the patentee with official letter DNL1 (see annex 3) and the original retained on file for reference.

PECS:- Certificates and decisions are created using Word templates and applying electronic signatures of DD's. Create, lock and import minute from PROSE (doc code MINUTE-LIT), then create and send a “PSM – Decision to sign” message.

Once authorisation is received from the DD, an electronic signature can be applied to the decision.

Letter created, locked and imported from PROSE.

File note is created in Word and imported using manual import (doc code is FILE NOTE-LIT).

For issuing decision and clearing records see 22.25 – 22.28

Disagreement that the patents are in conflict

22.09 The patentee may reply that he disagrees with the examiner's view that the GB patent and the European patent (UK) are in conflict. In such circumstances, evidence will usually be provided to support this view. The letter and evidence should be placed on file and the file then sent to the originating examiner with a suitable minute. If the examiner allows the

patentee's submissions, decision 2 (see annex 6) should be prepared for the Deputy Director to sign. Once the decision has been signed, a copy should be issued to the patentee with official letter DNL1 (see annex 4) and the original decision retained on file for reference. A file note should be added to the proceedings sheet as follows:

Revocation action under S73(2) not proceeded with on (date of clear records).

PECS:- Certificates and decisions are created using Word templates and applying electronic signatures of DD's. Create, lock and import minute from PROSE (doc code MINUTE-LIT), then create and send a "PSM – Decision to sign" message.

Electronic signature is applied after authorization has been obtained from the DD.

Letter created, locked and imported from PROSE.

File note is created in Word and imported using manual import (doc code is FILE NOTE-LIT).

Clear records.

An OPTICS entry should be made to show that revocation has not taken place. Using REG ENT on OPTICS, a free text entry should be made as follows:

Section 73(2) action taken on (date of PL3) in view of EP (UK)not proceeded with on (date of decision)"

Obtain a DIS FUL print for the file from OPTICS and place at the front of the file. The electronic ledger should be updated by entering against the file reference number, Not proceeded with on (date of decision) and the date of clearing the file. The movement card should be destroyed.

The front movement sheet of the file should be marked up NMP, file to store.

A Journal entry should be prepared as follows:

Section 73(2) action taken on (date of PL3), in view of EP(UK)....., not proceeded with on (date of clear records). Clear records.

PECS:- Advert is created in Word and imported using manual import (doc code is ADVERT).

If the submissions are not allowed, the examiner will provide instructions as to how you should proceed.

Patent to lapse or to be surrendered

22.10 The patentee may state that he is either:

- allowing the patent to lapse due to non-payment of renewal fees, or
- that he proposes to surrender the patent

It would appear that neither of these options is *prima facie* allowable because both patents would have been granted for a period of time. The MOPP Section 73.09 indicates that once revocation action has started, it should normally continue even though the patent may have lapsed or an offer to surrender has been made. In such a case, the file should be returned to the originating examiner with a suitable minute. The examiner will usually ask for a letter to be issued to the patentee pointing out these facts and giving twenty eight days to request a hearing.

PECS:- Create, lock and import minute from PROSE (doc code MINUTE-LIT), then create and send a “PSM - s73(2)” message to DD.

22.11 The patentee may submit proposals to amend the patent in order to remove any conflict (see below).

Amendments allowed instead of revocation

22.12 When proposals for amendment of a GB patent are received in response to revocation action under section 73(2), the proposals should be placed on the file and sent to the originating examiner. The examiner will reply after he has considered whether the proposed amendments are acceptable or not. If they are not acceptable, the examiner will issue further instructions as to what action should be taken.

PECS:- Create, lock and import minute from PROSE (doc code MINUTE-LIT), then create and send a “PSM – Amendments filed” message to DD.

22.13 If the proposals for amendment are acceptable, the B specification of the patent should be amended in red and the appropriate certificate applied. Decision 1 (Annex 7) should be prepared and tabbed with Office decision label and the file forwarded to the Deputy Director who will sign both the certificate and the decision.

PECS:- Use the assemble and enhancer function to apply the amendments. Certificates and decisions are created using Word templates and applying electronic signatures of DD's. Create, lock and import minute from PROSE (doc code MINUTE-LIT), then create and send a “PSM – Decision and certificate to sign” message to DD.

Once a message is received from the DD, the appropriate certificate should be pasted in to a Word document, a DD electronic signature applied to the decision and certificate and the certificate imported using manual import (doc code is CERTIFICATE).

22.14 Once the decision and certificate are signed, a copy of the decision should

be issued to the patentee with Official Letter DNL1 (see annex 4) and the original decision retained on file for reference.

PECS:- Letter created, locked and imported from PROSE.

File note is created in Word and imported using manual import (doc code is FILE NOTE-LIT).

22.15 The electronic ledger should be updated by entering against the file reference number *Patent amended on (date of the decision)* and the date of clearing the file. The movement card should be destroyed.

22.16 An OPTICS entry should then be made. From the menu select item 7 - amendments allowed - type in the file number and then select item 4 - under Section 73 - this will prompt you to insert the date of the decision. When prompted use A3 (upper case letters) as authority for the entry. Obtain a DIS FUL print for the file from OPTICS and file this at the front of the file.

22.17 A Journal entry should be prepared as follows:

Specification amended under Section 73(2), on (date of decision)

PECS:- Advert is created in Word and imported using manual import (doc code is ADVERT).

22.18 A 'clear records' stamp and publications request should be completed. You need to ensure that the correct instructions are given to Publishing Section regarding the action that should be taken. A file note should be added to the proceedings sheet as follows:

Decision issued on (date of decision). Patent amended. Clear records.

PECS:- File note is created in Word and imported using manual import (doc

code is FILE NOTE-LIT).

22.19 Following this, the file can be sent to Publishing Section for the amended specification to be published. From there, the file will be sent back to Litigation Section for checking purposes, the file should then be sent to NMP for storage.

PECS:- Create, lock and import minute from PROSE (doc code MINUTE LIT), then create and send a “PSM – S73(2)” message to the Publishing Team mailbox.

If both the GB and the EP patents require amendment in order to remove any conflict, the GB patent is amended under s73(2) and the European patent is amended under s27. The amendment under s73(2) is stayed pending the expiry of the s27 opposition period. For procedures on amendment under s27 see Chapter 17

NO RESPONSE TO OFFICIAL LETTER PL3: OFFICIAL LETTER PL5

22.20 If, after the two month period allowed for response to the Official Letter PL3, no reply has been received, Official Letter PL5 (see annex 2) offering a hearing should be issued, specifying a 21 day period for reply. Section 117(B) of the Patent Act 1977 provides for an additional automatic extension of two months for periods specified by the Office. This may be applied for retrospectively. As a result, the case should be diaried for 21 days and 2 months from the date of the PL5 letter.

PECS:- Letter created, locked and imported from PROSE.

22.21 A file note should be added to the proceedings sheet as follows:

No reply received to PL3 issued on (date of PL3),. PL5 issued on (date of

PL5) B/F to(Always to a Wednesday).

PECS:- File note is created in Word and imported using manual import (doc code is FILE NOTE-LIT).

Request for a hearing in response to PL5

22.22 If in response to the PL5 letter a hearing is requested, this will need to be arranged by the Hearings Team. Following the hearing, a decision will be written by the hearing officer and issued by the Hearings Team. If the patent is revoked see 22.24 – 22.28. If the patent is not revoked see 22.09.

PECS:- To refer to the hearing team, create, lock and import minute from PROSE (doc code MINUTE-LIT), then create and send a “PSM – set up hearing” message.

No Response to Official Letter PL5

22.23 If no response has been received to the PL5 letter, decision 6 (see annex 9) should be prepared and forwarded to the Deputy Director with the following minute:

No reply has been received to either PL3 or PL5. Decision 6 prepared and forwarded for your signature/PECS:- Please can you authorise that the decision can be signed.

PECS:- Certificates and decisions are created using Word templates and applying electronic signatures of DD's. Create, lock and import a minute from PROSE (doc code is MINUTE-LIT), then create and send a “PSM – s73(2) Decision to sign” message to DD.

Once authorisation is received from the DD, an electronic signature can be applied to the decision.

22.24 Once the decision has been signed, a copy should be issued to the patentee with Official letter DNL1 (see annex 3) and the original decision retained for reference.

PECS:- Letter created, locked and imported from PROSE.

22.25 A file note should be added to the proceedings sheet as follows:

Decision issued on(date of decision). Patent revoked. Clear records.

PECS:- File note is created in Word and imported using manual import (doc code is FILE NOTE-LIT).

Clearing Records

22.26 OPTICS needs to be updated by selecting item 16 from the menu - Register Revocation. The DIS FUL function on OPTICS should be used to print a copy of the register, and this should be placed at the front of the file. The front movement sheet of the file should be marked up *NMP, File to Store*. If, when registering the revocation of the patent, it is found that the patent has lapsed, it should be referred to the B3 who will change the status of the patent so that it can be revoked.

PECS:- Create, lock and import minute from PROSE (doc code MINUTE-LIT), then create and send a “PSM – Patent ceased” message to B3.

22.27 A Journal entry should be prepared under the following heading :

SECTION 73

Revocation on the Comptroller's Initiative

Patent revoked under Section 73(2)

Patent Number

PROPRIETOR'S NAME

Title

PECS:- Advert is created in Word and imported using manual import (doc code is ADVERT).

- 22.28 The electronic ledger should be updated by entering against the file reference number, Patent revoked, on (date of decision) and the date of clearing the file. The movement card should be destroyed.

EXTENSIONS OF TIME

- 22.29 Occasionally an extension of time request may be received. Each request should be referred to the originating examiner, who will consider it on its respective merits. It should be remembered that section 73 cases are *ex parte*. Therefore no other parties are involved or need to be consulted.

PECS:- Create, lock and import minute from PROSE (doc code MINUTE-LIT), then create and send a "PSM – Extension of Time request" message to DD.

- 22.30 Most of the requests for extensions of time relate to proposed amendments. In such cases, extensions have been granted for periods of from one to three months.

- 22.31 Once an extension of time has been granted, this should be confirmed in writing and a new deadline for a response set. A file note should be added to the proceedings sheet and a copy of the EOT confirmation letter placed on file.

PECS:- Letter created, locked and imported from PROSE.

File note is created in Word and imported using manual import (doc code is

FILE NOTE-LIT).

**Annex 1
Letter S73(2) PL3**

c/o

Patents Directorate
Concept House
Cardiff Road Newport
South Wales NP10 8QQ

Direct Line: 01633 81xxxx
E-mail: *****@ipo.gov.uk
Switchboard: 01633 814000
Fax: 01633 814491
Minicom: 08459 222250
DX: 722540/41 Cleppa Park 3
Internet: <http://www.ipo.gov.uk>

Your Reference:
Our Reference: Room 3Y31/Name/File Reference

Date

Dear Sirs

Patent number: xxxxxx (*Proprietors Name*)
Patents Act 1977: Action under Section 73(2)

Latest date for reply. xx. Xxxx xx

The examiner (xxxxxx tel xxxxxx) considers that this patent has been granted for the same invention as European Patent (UK) No. xxxxxx having the same priority date.

By xxxxx you should either propose amendments to the UK patent in order to meet this objection or make observations on it. If you do not the UK patent may be revoked.

If you want to propose amendments it would be helpful if these could be shown in red ink on a copy of the printed specification. However, if the amendments are simple and not extensive you may submit them in a letter. You may not however amend your patent in a way which adds matter or extends the protection conferred by the patent.

Yours faithfully

Your name
Litigation Section
Patents Directorate

April 2009

**Annex 2
Letter S73(2) PL5**

c/o

Patents Directorate
Concept House
Cardiff Road Newport
South Wales NP10 8QQ

Direct Line: 01633 814334
E-mail: *****@ipo.gov.uk
Switchboard: 01633 814000
Fax: 01633 814491
Minicom: 08459 222250
DX: 722540/41 Cleppa Park 3
Internet: <http://www.ipo.gov.uk>

Your Reference:

Our Reference: Room 3Y31/Name/File Reference

Date

Dear Sirs

Patent number: xxxxxxx (Proprietors Name)
Patents Act 1977: Action under Section 73(2)

Latest date for reply. xx. Xxxx xx

Our letter of xx Xxxx xx invited you to propose amendments or to make observations in response to an objection that the patent had been granted for the same invention as European Patent (UK) No xxxxxxxx . However no reply has been received.

We will now consider whether your patent should be revoked. If you want to be heard before the Comptroller decides the matter you should ask by xxxxx for a hearing to be appointed.

Yours faithfully

Your name
Litigation Section
Patents Directorate

April 2009

**Annex 3
Letter DNL1**

c/o

Patents Directorate
Concept House
Cardiff Road, Newport
South Wales NP10 8QQ

Direct Line: 01633 81xxxx
Email: *****@ipo.gov.uk
Switchboard: 01633 814000
Fax: 01633 814491
Minicom: 08459 222250
DX: 722540/41 Cleppa Park 3
Internet: <http://www.ipo.gov.uk>

Your Reference:
**Our Reference: Room 3Y31/Name/File
Reference**

Date

Dear Sirs

Action under Section 73(2)

1. Please find enclosed a copy of a decision dated xxxxxx.
2. The Patents Act 1977 gives you the right to appeal to the Patents Court (part of the High Court) against the decision if you wish to do so. The procedure for appeal is governed by the Practice Direction to Part 52 of the Civil Procedure Rules, 1998 (as amended). If you decide to appeal, a Notice of Appeal must be made in the appropriate format. Further details may be obtained from the High Court Appeals Office, Room WG07, West Green Building, Royal Courts of Justice, Strand, London WC2A 2LL (telephone number 020 7947 7383).
3. Two copies of the Notice of Appeal must be lodged with the High Court Appeals Office (address above) together with the fee (currently £200) **within the time period specified in the decision**. The latest date for appeal is therefore xxxxxx. Any request for an extension to the appeal period identified in the decision must be made to the court.
4. Once you have filed your appeal at the court, you must send a copy to the Notice of Appeal to the Comptroller as soon as practicable and no later than 7 days from the date of filing.
5. I must warn you that costs, which may be large, are normally awarded against the unsuccessful party to the appeal.

Yours faithfully

Your name
Litigation Section
Patents Directorate

April 2009

**Annex 4
Letter DNL1**

c/o

Patents Directorate
Concept House
Cardiff Road, Newport
South Wales NP10 8QQ

Direct Line: 01633 81xxxx
Email: *****@ipo.gov.uk
Switchboard: 01633 814000
Fax: 01633 814491
Minicom: 08459 222250
DX: 722540/41 Cleppa Park 3
Internet: <http://www.ipo.gov.uk>

Your Reference:
Our Reference: Room 3Y31/Name/File Reference

Date

Dear Sir

Patent Number: xxxxxx (Proprietors Name)

Please find enclosed a copy of a decision dated xxxxxxxx.

Yours faithfully

Your name
Litigation Section
Patents Directorate

**Annex 5
Decision 3**

Date

PATENTS ACT 1977

PROPRIETOR

ISSUE

Whether Patent No. GB/EP xxxxxxxx should
be revoked under Section 73(2)

DECISION

- 1 An Official letter dated xxxxxxxx explained that the above UK patent appeared to be for the same invention as European patent (UK) No. xxxxxxxx, and that revocation of the UK patent under Section 73(2) might therefore be necessary. The proprietors in a letter dated xxxxxxxx advised (insert appropriate wording such as: that they are content for the revocation of the patent.)
- 2 I am satisfied that the conditions of Section 73(2) are met. I therefore order revocation of the UK Patent.

Appeal

- 3 Under the Practice Direction to Part 52 of the Civil Procedure Rules, any appeal must be lodged within 28 days.

(Name of DD)

Deputy Director acting for the Comptroller

**Annex 6
Decision 2**

Date

PATENTS ACT 1977

PROPRIETOR

ISSUE Whether Patent No. GB/EP xxxxxxxx should
 be revoked under Section 73(2)

DECISION

1. The Official letter dated xxxxxxxx explained that the above UK patent appeared to be for the same invention as European patent (UK) No. xxxxxxxx, and that revocation of the UK Patent under Section 73(2) might therefore be necessary.
2. The proprietors contested the examiner's view in their (attorney's) letter dated xxxxxxxx. I have considered their observations and I make no order for revocation of the UK patent.

(Name of DD)
Deputy Director acting for the Comptroller

**Annex 7
Decision 1**

Date

PATENTS ACT 1977

PROPRIETOR

ISSUE Whether Patent No. GB/EP xxxxxxxx should
 be revoked under Section 73(2)

DECISION

1. An Official letter dated xxxxxxxx explained that the above UK patent appeared to be for the same invention as European patent (UK) No. xxxxxxxx, and that revocation of the UK Patent under Section 73(2) might therefore be necessary.
2. The proprietors submitted proposals for amendment of the specification, which are allowable under Section 76.
3. I am satisfied that the proposed amendments prevent there from being two patents in respect of the same invention. I therefore allow the specification to be amended as proposed, and make no order for revocation of the UK patent.

(Name of DD)
Deputy Director acting for the Comptroller

**Annex 8
Decision 1a**

Date

PATENTS ACT 1977

PROPRIETOR

ISSUE

Whether Patent No. GB/EPxxxxxxx should
be revoked under Section 73(2)

DECISION

1. An Official letter dated xxxxxxxx explained that the above UK patent appeared to be for the same invention as European patent (UK) No. xxxxxxx B1, and that revocation of the UK Patent under Section 73(2) might therefore be necessary.
2. The proprietors submitted proposals for amendment of both the UK Patent and European patent (UK) No. xxxxxxx specifications, which are allowable under Section 76.
3. I am satisfied that the proposed amendments prevent there from being two patents in respect of the same invention. I therefore allow the specifications to be amended as proposed, and make no order for revocation of the UK patent.

(Name of DD)

Deputy Director acting for the Comptroller

**Annex 9
Decision 6**

Date

PATENTS ACT 1977

PROPRIETOR

ISSUE

Whether Patent No. GB xxxxxxxx should be
revoked under Section 73(2)

DECISION

1. An Official letter dated xxxxxxxx explained that the above UK patent appeared to be for the same invention as European patent (UK) No xxxxxxxx and that revocation of the UK Patent under Section 73(2) might therefore be necessary. The proprietors did not submit observations or proposals for amendment. A hearing was therefore offered in an Official letter dated xxxxxxxx, but the proprietors have not asked to be heard.

2. In the absence of any argument to the contrary, I am satisfied that the conditions of Section 73(2) are met. I therefore order revocation of the UK patent.

Appeal

3. Under the Practice Direction to Part 52 of the Civil Procedure Rules, any appeal must be lodged within 28 days.

(Name of DD)

Deputy Director acting for the Comptroller