

PART VI - PATENTS

PATENTS COUNTY COURTS

Section 287: Patents county courts: special jurisdiction

287.01 The first group of sections in Part VI of the CDP Act introduces a new arena for proceedings concerning patents or designs. Sections 287 to 292 are those in question.

287.02 A way was sought of reducing the costs of patent proceedings and making them more accessible, in particular, to small entrepreneurs seeking to enforce or defend patent claims.

287.03 To that end, this Part provides for patents cases to be conducted in a county court, and patent agents to conduct such litigation. Sections 287 to 292 were brought into force on 1 August 1989. Section 287 was amended by the Constitutional Reform Act 2005 to provide a role for the Lord Chief Justice of England and Wales or a judicial office holder appointed by him to exercise functions under the section.

287.04 Section 287 sets out the framework for the establishment of a county court jurisdiction over patents and designs in England and Wales.

Section 287(1)

The Lord Chancellor may, with the concurrence of the Lord Chief Justice, by order made by statutory instrument designate any county court as a patents county court and confer on it jurisdiction (its "special jurisdiction") to hear and determine such descriptions of proceedings -

- (a) relating to patents or designs, or*
- (b) ancillary to, or arising out of the same subject matter as, proceedings relating to patents or designs,*

as may be specified in the order.

287.05 The Lord Chancellor, with the concurrence of the Lord Chief Justice or a judicial office holder appointed by him to exercise functions under this section, may appoint, by statutory instrument, one or more county courts to hear such types of patent and design proceedings as may be described by the order. The jurisdiction is not defined by reference to county court districts but is national in scope, depending upon rules of court to allocate business to the most suitable venue (if there is more than one). The jurisdiction order may cover proceedings under the Patents Acts 1977 and the Registered Designs Act 1949. The word "designs" includes the concept of "Design Right" created by Part III of the CDP Act. The patents county court may also be allowed to deal with matters related to patents and designs proceedings. This is because patent and design actions sometimes involve additional claims, for example, for breach of confidence or passing off. The claims for infringement of the new design right may also involve such subsidiary claims. Litigants wishing to pursue such ancillary proceedings would, otherwise, be forced to do so in the High Court.

287.06 The Patents County Court is located at Field House 15-25 Breems Buildings, London EC4A 1DX. Its jurisdiction extends to any action or matter relating to patents or designs over which the High Court has jurisdiction together with any claims or matters

ancillary thereto or arising therefrom, other than appeals from the comptroller.

Section 287(2)

The special jurisdiction of a patents county court is exercisable throughout England and Wales, but rules of court may provide for a matter pending in one such court to be heard and determined in another or partly in that and partly in another.

287.07 The special jurisdiction of a patents county court is exercisable throughout England and Wales, subject to rules of court which may determine the venue for hearing. This provision will be necessary if there is more than one court exercising the new jurisdiction (although at present there is only one such court, see 287.06). It seeks to ensure as far as possible that the venue at all stages is convenient to the parties.

Section 287(3)

A patents county court may entertain proceedings within its special jurisdiction notwithstanding that no pecuniary remedy is sought.

287.08 Historically the county courts' jurisdiction has been exercised primarily with regard to monetary claims of one kind or another. The range of remedies sought in patents and design proceedings is liable to be much wider than in ordinary civil proceedings and may be unaccompanied by any financial claim. The patents county court is therefore empowered to grant an injunction or order delivery up, for example, although no financial claim is made.

Section 287(4)

An order under this section providing for the discontinuance of any of the special jurisdiction of a patents county court may make provision as to proceedings pending in the court when the order comes into operation.

287.09 Transitional arrangements may be made covering pending proceedings in the event of any part of the special jurisdiction being discontinued.

Section 287(5)

Nothing in this section shall be construed as affecting the ordinary jurisdiction of a county court.

287.10 The jurisdiction is separated from that of the ordinary county court so as to leave untouched in the ordinary county court any contractual disputes relating to patents which are presently dealt with there.

Section 287(6)

The Lord Chief Justice of England and Wales may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.

287.11 Subsection (6) was added by the Constitutional Reform Act 2005 allowing for the Lord Chief Justice of England and Wales to nominate a judicial officer holder to exercise his functions in making an Order to confer jurisdiction on county courts to hear proceedings relating to patents and designs.