46. 在批予後修訂說明書的一般權力

(1) 除第 103 條另有規定外，根據本條例批予的專利的所有人可向法院申請修訂該專利的說明書，而法院可藉命令容許在符合法院認為合適的條件下，作出任何該等修訂。

(2) 如在法院有任何法律程序仍然待決，而在該法律程序中該專利的有效性可能成為爭論點，則不得容許作出任何該等修訂。

(3) 根據本條對任何專利的說明書作出的修訂須具有效力，並須當作自該專利的批予起一直具有效力。

(4) 任何人意欲反對根據本條提出的申請，可按照法院規則給予法院反對的通知；而法院在決定是否應申請容許修訂時，須考慮該項反對。

(5) 在收到以訂明方式提交的法院命令及證明文件後，處長須記錄對該專利的說明書作出的修訂，並須將其發表和在憲報刊登該事實的公告。

(6) 處長可在沒有任何申請為上述目的向法院或向他提出的情況下，修訂專利的說明書，藉以承認某註冊商標。

(7) 法院規則可就將根據本條提出的任何申請通知處長訂定條文，並可就處長因應該項申請而應訊和就實施法院因應該項申請所作出的任何命令，訂定條文。

[*比照 1977 c. 37 s. 27 U.K.*]

46. General power to amend specification after grant

(1) Subject to section 103, the proprietor of a patent granted under this Ordinance may apply to the court to amend the specification of the patent and the court may by order allow any such amendment subject to such conditions as it thinks fit.

(2) No such amendment shall be allowed if there are pending before the court proceedings in which the validity of the patent may be put in issue.

(3) An amendment of a specification of a patent under this section shall have effect and be deemed always to have had effect as from the grant of the patent.

(4) Any person wishing to oppose an application under this section may, in accordance with rules of court, give to the court notice of opposition; and the court shall consider the opposition in deciding whether to grant the application.

(5) Upon receipt of the court order and supporting documents filed in the prescribed manner the Registrar shall record the amendments to the specification of the patent and shall publish this and advertise the fact by notice in the Gazette.

(6) The Registrar may, without any application being made to the court or to him for the purpose, amend the specification of a patent so as to acknowledge a registered trade mark.

(7) Rules of court may provide for the notification of any application under this section to the Registrar and for his appearance on the application and for giving effect to any order of the court on the application.

[*cf. 1977 c. 37 s. 27 U.K.*]

73. 防止直接使用發明

任何專利在其有效時均授予其所有人權利以阻止所有未獲他同意的第三者在香港作出以下全部或任何一項作為——

(*a*) 就任何屬該專利的標的事項的產品而言——

(i) 製造、使用或進口該產品或將該產品推出市場；或

(ii) 屯積該產品，而不論是為將該產品推出(在香港或其他地方的)市場的目的或為其他目的；

(*b*) 就任何屬該專利的標的事項的方法而言——

(i) 使用該方法；或

(ii) 當第三者知道在沒有該專利的所有人同意下而使用該方法是被禁止的，或在當時的情況下該項禁止對一個合理的人而言是明顯的，但卻提供該方法予人在香港使用；

(*c*) 凡該項發明為一個方法，則就藉該方法而直接獲得的任何產品而言——

(i) 將該產品推出市場或使用或進口該產品；或

(ii) 屯積該產品，而不論是為將該產品推出(在香港或其他地方的)市場的目的或為其他目的。

[*比照 1992 No. 1 s. 40 Eire*]

73. Prevention of direct use of invention

A patent while it is in force shall confer on its proprietor the right to prevent all third parties not having his consent from doing in Hong Kong all or any of the following—

(*a*) in relation to any product which is the subject-matter of the patent—

(i) making, putting on the market, using or importing the product; or

(ii) stocking the product, whether for the purpose of putting it on the market (in Hong Kong or elsewhere) or otherwise;

(*b*) in relation to any process which is the subject-matter of the patent—

(i) using the process; or

(ii) offering the process for use in Hong Kong when the third party knows, or it is obvious to a reasonable person in the circumstances, that the use of the process is prohibited without the consent of the proprietor of the patent;

(*c*) where the invention is a process, then in relation to any product obtained directly by means of that process—

(i) putting on the market, using or importing the product; or

(ii) stocking the product, whether for the purpose of putting it on the market (in Hong Kong or elsewhere) or otherwise.

[*cf. 1992 No. 1 s. 40 Eire*]

74. 防止間接使用發明

(1) 任何專利在其有效時亦授予其所有人權利，以阻止所有未獲他同意的第三者在香港向或要約向任何人 (有權實施該專利發明的一方除外) 供應與該項發明的某重要元素有關的媒介，以令該項發明發揮效用，而當時該第三者知道所述媒介是適合的且是預定用以使該項發明在香港發揮效用的，或在有關情況下此事對一個合理的人而言是明顯的。

(2) 當第 (1) 款所提述的媒介是主要商業產品時，第 (1) 款即不適用，但如作出上述供應或要約的目的是誘使獲得供應的人或 (視屬何情況而定) 被要約的人作出專利的所有人能憑藉第 73 條阻止的作為，則屬例外。

(3) 任何實行第 75(*a*)、(*b*) 或 (*c*) 條所提述的作為的人，不得被視為有權依據第 (1) 款實施一項發明的各方。

(4) 就第 (1) 款而言——

(*a*) 在該款中提述有權實施一項發明的人，包括提述憑藉第 69 條有權如此行事的人；及

(*b*) 凡任何人憑藉第 30、35、39(4)、41(4) 或 (5)、83、106(4) 或 126(5) 條 (就第 41 條而言，包括第 127 條所施行的該條) 而有權就該項發明作出任何作為而不使該作為構成侵犯該項發明的專利，則在該作為所涉的範圍內，該人須視為有權實施該項發明的人。

[*比照 1992 No. 1 s. 41 Eire*]

74. Prevention of indirect use of invention

(1) A patent while it is in force shall also confer on its proprietor the right to prevent all third parties not having his consent from supplying or offering to supply in Hong Kong a person, other than a party entitled to work the patented invention, with means, relating to an essential element of that invention, for putting it into effect, when the third party knows, or it is obvious in the circumstances to a reasonable person, that the said means are suitable and intended for putting that invention into effect in Hong Kong.

(2) Subsection (1) shall not apply when the means referred to therein are staple commercial products, unless the supply or offering is made for the purpose of inducing the person supplied or, as the case may be, to whom the offer is made to commit acts which the proprietor of a patent is enabled to prevent by virtue of section 73.

(3) Persons performing acts referred to in section 75(*a*), (*b*) or (*c*) shall not be considered to be parties entitled to work an invention pursuant to subsection (1).

(4) For the purposes of subsection (1)—

(*a*) reference in that subsection to a person entitled to work an invention includes a reference to a person so entitled by virtue of section 69; and

(*b*) a person who by virtue of section 30, 35, 39(4), 41(4) or (5), 83, 106(4) or 126(5) (including, in the case of section 41, that section as applied by section 127) is entitled to do an act in relation to the invention without it constituting an infringement of a patent for the invention shall, so far as concerns that act, be treated as a person entitled to work the invention.

[*cf. 1992 No. 1 s. 41 Eire*]

80. 因專利遭侵犯而提起的法律程序

(1) 在符合本部的規定下，專利的所有人可就他指稱有權根據第 73 至 75 條阻止的任何侵犯行為在法院提起民事法律程序，並可 (在不損害法院的其他司法管轄權的原則下) 在該法律程序中提出以下申索——

(*a*) 要求作出強制令，以制止被告人作出意恐他作出的任何該類侵犯行為；

(*b*) 要求作出命令，以規定被告人將其專利被侵犯的任何專利產品或將該產品屬其不可分拆的組成部分的任何物品交出或銷毀；

(*c*) 要求就該項侵犯獲支付損害賠償；

(*d*) 要求交出被告人自該項侵犯所取得利潤；

(*e*) 要求作出宣布，謂該專利屬有效且為被告人所侵犯。

(2) 法院不得就同一項侵犯判給專利的所有人損害賠償兼命令向他交出利潤。

(3) 除本部另有規定外，法院在決定是否批予根據本條申索的任何種類濟助和在決定獲批予濟助的範圍時，須應用在緊接本部生效日期前法院就該類濟助所應用的原則。

[*比照 1977 c. 37 s. 61 U.K.; 1992 No. 1 s. 47 Eire*]

80. Proceedings for infringement of patent

(1) Subject to this Part, civil proceedings may be brought in the court by the proprietor of a patent in respect of any act of infringement which he alleges he is entitled under sections 73 to 75 to prevent and (without prejudice to any other jurisdiction of the court) in those proceedings a claim may be made—

(*a*) for an injunction restraining the defendant from any apprehended act of such infringement;

(*b*) for an order requiring the defendant to deliver up or destroy any patented product in relation to which the patent is infringed or any article in which the product is inextricably comprised;

(*c*) for damages in respect of the infringement;

(*d*) for an account of the profits derived by the defendant from the infringement;

(*e*) for a declaration that the patent is valid and has been infringed by the defendant.

(2) The court shall not, in respect of the same infringement, both award the proprietor of a patent damages and order that he shall be given an account of the profits.

(3) Subject to this Part, in determining whether or not to grant any kind of relief claimed under this section and the extent of the relief granted the court shall apply the principles applied by the court in relation to that kind of relief immediately before the commencement of this Part.

[*cf. 1977 c. 37 s. 61 U.K; 1992 No. 1 s. 47 Eire*]

81. 對追討專利遭侵犯的損害賠償的限制

(1) 在因專利遭侵犯而提起的法律程序中，凡被告人證明在侵犯的日期並不知悉亦無合理理由假設該專利已存在，則不得判給損害賠償，亦不得作出須由被告人交出所得利潤的命令。

(2) 就第 (1) 款而言，任何人不得只因"專利"或"取得專利"、"patent"或"patented"的文字或任何明示或暗示已取得專利的文字已加於某產品上而被當作已知悉或已有合理理由假設該產品已取得專利，但如所涉的文字附有該專利的編號，則屬例外。

(3) 在因專利遭侵犯而提起的法律程序中，法院如認為合適，可拒絕就在根據第 39(4) 或 126(5) 條 (視屬何情況而定) 所指明的任何進一步期間內但在為該款的施行而訂明的續期費和任何附加費的繳付之前的侵犯，判給任何損害賠償或作出任何該等的命令。

(4) 凡任何專利的說明書的修訂已根據本條例獲容許，則除非法院信納原先所發表的說明書是真誠地且以合理水平的技術和知識擬定的，否則即使該專利乃於決定容許上述修訂或依據第 43(2) 條記錄該項修訂 (視屬何情況而定) 的日期前遭侵犯，亦不得在因而提起的法律程序中判給任何損害賠償。

(5) 在不限制第 (4) 款的效力下，凡法院根據第 46(1) 條作出命令容許對任何專利的說明書作出修訂，則不得在任何法律程序中就任何在作出該命令的日期之後但在為第 46(5) 條的施行而將該命令的文本提交處長之前的期間內所犯的對該專利的侵犯而判給損害賠償。

[*比照 1977 c. 37 s. 62 U.K.*]

81. Restrictions on recovery of damages for infringement

(1) In proceedings for the infringement of a patent damages shall not be awarded, and no order shall be made for an account of profits, against a defendant who proves that at the date of the infringement he was not aware, and had no reasonable grounds for supposing, that the patent existed.

(2) For the purposes of subsection (1) a person shall not be taken to have been so aware or to have had reasonable grounds for so supposing by reason only of the application to a product of the word "patent" or "patented" or "專利" or "取得專利", or any word or words expressing or implying that a patent has been obtained for the product, unless the number of the patent accompanied the word or words in question.

(3) In proceedings for infringement of a patent the court may, if it thinks fit, refuse to award any damages or make any such order in respect of an infringement committed during any further period specified under section 39(4) or 126(5), as the case may be, but before the payment of the renewal fee and any additional fee prescribed for the purposes of that subsection.

(4) Where an amendment of the specification of a patent has been allowed under this Ordinance, no damages shall be awarded in any proceedings for an infringement of the patent committed before the date of the decision to allow the amendment or of the recording of the amendment pursuant to section 43(2), as the case may be, unless the court is satisfied that the specification of the patent as originally published was framed in good faith and with reasonable skill and knowledge.

(5) Without limiting the effect of subsection (4), where an order has been made by the court under section 46(1) allowing an amendment of the specification of a patent, no damages shall be awarded in any proceedings for an infringement of the patent committed after the date on which the order is made and before a copy of the order is filed with the Registrar for the purposes of section 46(5).

[*cf. 1977 c. 37 s. 62 U.K.*]