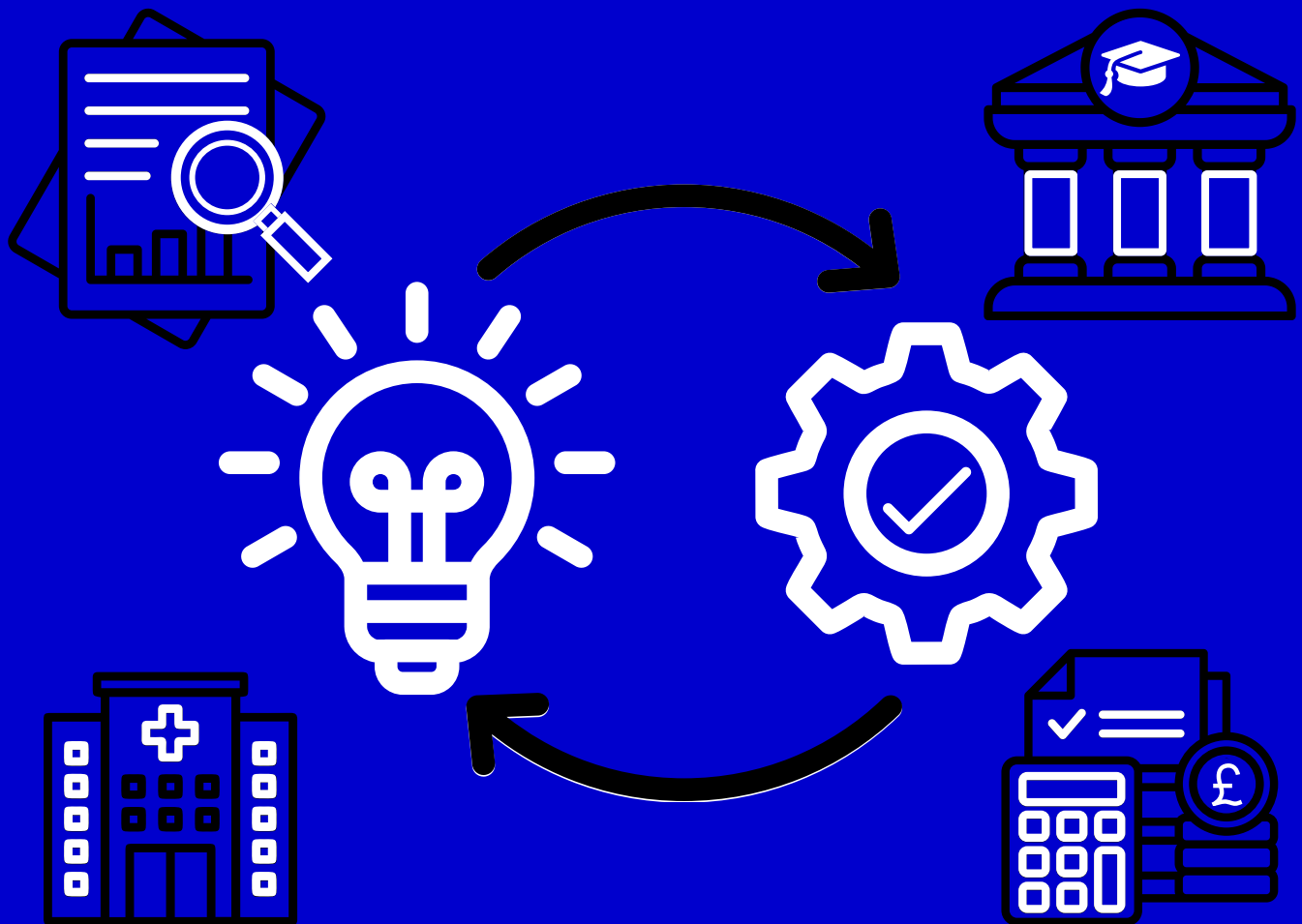


FROM IDEA TO ADOPTION

PART 5



MT1
COLLABORATIVE

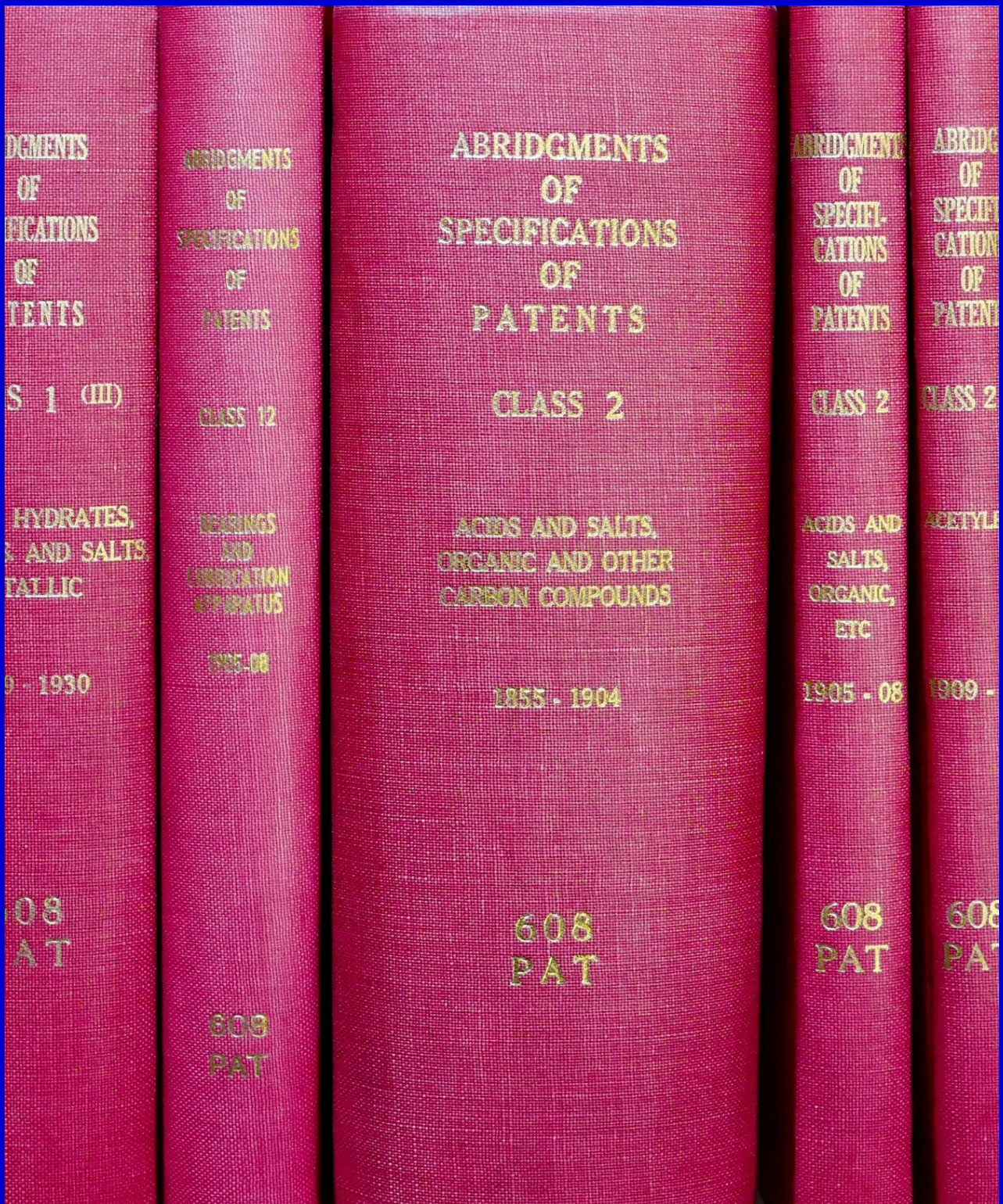


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THE PATENTS ACT (1977) AND THE COPYRIGHT, DESIGNS & PATENTS ACT (1988)



THE PATENTS ACT (1977) AND THE COPYRIGHT, DESIGNS & PATENTS ACT (1988)

N.B. The following are extremely brief summaries of the above legislation. For further information, view the full legislation at the links in the Further Reading & Resources section.

THE PATENTS ACT (1977)

Defines patentable inventions as:

“... an invention in respect of which the following conditions are satisfied...:

- a) The invention is new;
- b) It involves an inventive step;
- c) It is capable of industrial application;
- d) The grant of a patent for it is not excluded by [other] subsections...

It is hereby declared that the following are not inventions for the purposes of this Act...:

- a) A discovery, scientific theory, or mathematical method;
- b) A literary, dramatic, musical, or artistic work or any other aesthetic creation whatsoever;
- c) A scheme, rule or method for performing a mental act, playing a game or doing business, or a program for a computer;
- d) The presentation of information, ”

The Act also creates an exception for patentable inventions, where **patents will not be granted for inventions where the industrial scale up or applications of the invention would contravene with public policy or morality.**

Inventions are considered novel and new when the innovation is not already covered within the state of the art (defined as the most recent developments in a given field). Additionally, it should be noted that “industrial application”, is defined as an innovation that can be made or used in any relevant industry, including agriculture.



THE PATENTS ACT (1977) AND THE COPYRIGHT, DESIGNS & PATENTS ACT (1988)

THE PATENTS ACT (1977)

Important Exclusions relating to Medicine:

“A patent shall not be granted for the invention of:

- a) A method of treatment of the human or animal body by surgery or therapy, or;
- b) A method of diagnosis practised on the human or animal body.

... above does not apply to an invention consisting of a substance or composition for use in any such method.”

Meaning while you could patent a specific device, for example, you cannot patent the methodology of its function i.e. you cannot patent the technique itself, e.g. laparoscopy.

The term “Priority Date”, except where exclusions apply, defined as the date the patent application is filed. A key exclusion is where multiple applications have been submitted, which means the priority date will usually become the date of the first or earliest application.

Any individual can apply for a patent, or in partnership with another individual (or group), but it should be noted that the patent would be granted to:

- Primarily to the inventor/s;
- Where the inventors are not the applicant, or where the inventor has granted the rights to the invention to another party (whether due to law, legal contract, international agreement etc. or similar made prior to the invention), the patent will be granted to anyone individual or group who held full ownership of the rights to the invention (not including equitable interests) in the UK;
- These definitions also apply to the original inventor’s successor/s where applicable;

And to no other person.



THE PATENTS ACT (1977) AND THE COPYRIGHT, DESIGNS & PATENTS ACT (1988)

THE PATENTS ACT (1977)

“Inventor” is defined as:

“... the actual deviser of the invention, and “joint inventor” shall be construed accordingly.”

The Act also establishes that the person making the application will usually be assumed to be the person who is entitled to the patent, unless otherwise established during the application process.

The Inventor (or Joint Inventors) has a right to be mentioned in the patent application as such. It should also be noted that, where the applicant is not the Inventor/s, the application must state how the applicant has derived their right to be granted the patent. The application must always state the names (and any other identifying information) of the Inventor/s.

In the rare instance where a person has been listed as an Inventor on a patent application, but there is a dispute over that person’s legitimacy as the Inventor, the person making the dispute may apply to the Comptroller for a certificate to that effect. If the certificate is granted, the Comptroller will be required to correct any unissued versions of the patent and any related documents.

In filing a patent, you must be able to prove beyond doubt who the inventor is, and if you are not the inventor filing the patent, you must be able to prove you have permission to make the filing.



THE PATENTS ACT (1977) AND THE COPYRIGHT, DESIGNS & PATENTS ACT (1988)

THE PATENTS ACT (1977)

The Patent Application must contain:

- A direct statement requesting the granting of the patent,
- The specification documents relating to the invention, and relevant claims to the invention,
- And an abstract that provides technical information (N.B. where deemed to be insufficient, the Comptroller may reframe the application or the abstract to fulfil its purpose).

It should be noted that:

“The specification of an application shall disclose the invention in a manner which is clear enough and complete enough for the invention to be performed by a person skilled in the art.”

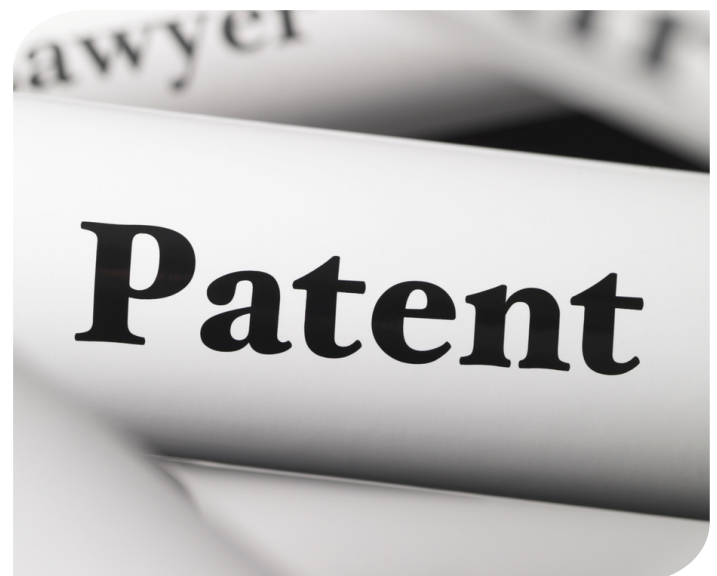
The claims should:

- Define the matter for which the applicant seeks protection,
- Be clear and concise,
- Be supported by the description and specification,
- And relate to one invention only, or a group of inventions which are intrinsically linked so as to constitute a single inventive concept.

An application may be withdrawn at any point before the patent is issued.

The application will be referred for preliminary examination if:

- a) The application has a date of filing (the earliest date where documents submitted to the Patent Office satisfy specific conditions i.e. the documents indicate a patent is sought, they identify the person applying with contact details and contain the appropriate description and specifications of the patent subject or make reference to a previous application containing that information).
- b) The application has not been withdrawn.
- c) The application fee has been paid.



THE PATENTS ACT (1977) AND THE COPYRIGHT, DESIGNS & PATENTS ACT (1988)

THE PATENTS ACT (1977)

The assessor will make a report relating to the application, and the applicant will have the opportunity to comment on the report and to make any requested amendments or provide any requested information and/or evidence.

On request, once the relevant preliminary examination and searches have been completed, the application can be referred for a substantive examination (at the request of the applicant, and after the payment of a fee).

Examinations aim to assess if the application is within the rules and requirements of the Patent Act (1977), and to determine if there are any aspects of the application which do not yet comply with the regulations. **If it is not determined that an application is compliant with the Act, after the proscribed time, it will be rejected.** There is a court appeal process, and refused applications can be reinstated, but this can be a lengthy and complex process.

If the patent is granted, the comptroller handling the application will publish a notice of the granted patent in their dedicated journal, as well as publishing the specification of the patent, the names of the applicant (and, where applicable, the inventor), and any other relevant items. The applicant will be sent a certificate as soon as is practicable.

N.B. The Patent Act (1977) is a 101-page document of the legal terms and processes around patents in the UK – **This text is a very surface level excerpt.** If you intend to file a patent, you should either familiarise yourself with the Act in full and engage with a legal advisor who specialises in patents.



THE PATENTS ACT (1977) AND THE COPYRIGHT, DESIGNS & PATENTS ACT (1988)

THE COPYRIGHT, DESIGNS & PATENTS ACT (1988)

This Act does not significantly update or change the existing Patents legislation from the 1977 Act but rather focuses on copyright law for creative and educational materials and products. We have included here a short overview of some of the key parts of the newer Act as they relate to more general copyright law, but for information on patents you should refer primarily to the 1977 Act.

Defines “author” as “the person who creates it [the work]”. “That person shall be taken to be:

- In the case of a sound recording, the producer;
- In the case of a film, the producer and principal director;’
- In the case of a broadcast, the person making the broadcast...;
- In the case of the typographical arrangement of a published edition, the publisher;”



Where there are multiple authors and the contribution of each author is not distinct from that of the other authors, this is “**joint authorship**”. Where a work is produced by collaboration of multiple authors and the works are designed to be used together e.g. a musical work and a literary work, this is “**co-authorship**”.

The author of a work is the first owner of any copyright upon that work.



THE PATENTS ACT (1977) AND THE COPYRIGHT, DESIGNS & PATENTS ACT (1988)

THE COPYRIGHT, DESIGNS & PATENTS ACT (1988)

Copyright duration for literary works -

Copyright naturally expires at the end of a 70-year period that commences at the end of the calendar year in which the author dies. Where there are multiple authors, this period commences at the end of the calendar year in which the last living author dies.

Where the country of origin of the work is not the UK, copyright duration is as applied by the country of origin.

If the work is computer-generated, copyright expires at the end of a period of 50-years from the end of the calendar year in which the work was created.

The owner of the copyright on a work has the exclusive rights to:

- Copy the work
- Issue copies of the work to the public
- Rent or lend the work to the public
- Perform, show or play the work to the public
- Communicate the work to the public
- Make an adaptation of the work, or do any of the above in relation to an adaptation



THE PATENTS ACT (1977) AND THE COPYRIGHT, DESIGNS & PATENTS ACT (1988)

THE COPYRIGHT, DESIGNS & PATENTS ACT (1988)

Infringement of copyright occurs when someone (an individual or an organisation) undertakes one of the above activities, without the approval of the author and/or without the appropriate license. Secondary infringement occurs when someone without license to use the copyright:

- Imports infringed work into the UK (e.g. importing pirated films)
- Possesses or deals with infringed copy, including:
 - Possessing in the course of business
 - Selling, letting, or offering/exposing for sale or hire
 - Exhibits or distributes the infringed copy to the public
 - Distributing in some other manner in such a way that it prejudicially affects the copyright owner

- Provides means to make infringing copies
- Permits the use of a premises for an infringing performance
- Provides apparatus for an infringing performance (e.g. providing speakers/amplifiers for an infringing musical performance)



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