



THE PATENTS RULES 1956, AMENDMENT NO. 1

DENIS BLUNDELL, Governor-General
ORDER IN COUNCIL

At the Government House at Wellington this 10th day of May 1976

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to the Patents Act 1953, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, and with the concurrence of the Right Honourable the Chief Justice and at least 2 of the other members of the Rules Committee constituted under the Judicature Amendment Act 1930, as amended by section 2 of the Judicature Amendment Act (No. 2) 1968 (of whom at least 1 was a Judge of the Supreme Court), hereby makes the following rules.

RULES

1. Title and commencement—(1) These rules may be cited as the Patents Rules 1956, Amendment No. 1, and shall be read together with and deemed part of the Patents Rules 1956* (hereinafter referred to as the principal rules).

(2) These rules shall come into force on the 1st day of January 1977.

2. Interpretation—Rule 2 of the principal rules is hereby amended by adding the following definitions:

“Report’ means a report by a scientific adviser:

“Respondent’s notice’ means a notice given under rule 26A of these rules:

“Scientific adviser’ includes a person with scientific qualifications, a medical practitioner, an engineer, an architect, a surveyor, an accountant, an actuary, and any other specially skilled person whose opinion in relation to any matter may be of assistance to the Court.”

3. Scientific advisers—The principal rules are hereby amended by inserting, after rule 6, the following rule:

“6A. (1) Where, under rule 5 or rule 6 of these rules, the Court or a Judge has appointed or nominated an independent scientific adviser, any report made by that scientific adviser, so far as it is not accepted by all parties to the proceedings, shall be treated as information furnished to the Court and shall be given such weight as the Court may think fit.

“(2) All reports by any such independent scientific adviser shall be made in writing to the Court and shall be accompanied by such copies thereof as the Court may require, and copies of the report shall be forwarded by the Court to the parties to the proceedings.

“(3) Any party may, within 14 days of receiving a copy of the report, or within such other time as the Court may direct, apply for leave to cross-examine the scientific adviser on his report; and the Court may, on any such application, make an order for the cross-examination of the scientific adviser at the hearing of the appeal. The Court shall, at the hearing, direct at what stage the scientific adviser is to be called.

“(4) If the scientific adviser considers that an experiment or test (other than one of a trifling character) is necessary to enable him to report in a satisfactory manner, he shall inform the parties and shall endeavour to agree with them as to the expenses involved and as to the persons to attend the experiment or test. In default of agreement between the parties all such matters shall be determined by the Court.

“(5) The Court may at any time direct the scientific adviser to make a further or supplemental report, and the provisions of subclauses (1) to (3) of this rule shall apply to any such report as they apply to an original report.”

4. Appeals—The principal rules are hereby amended by revoking rule 26, and substituting the following rules:

“26. (1) Any person who desires to appeal to the Court from any decision of the Commissioner in a case in which a right of appeal is given by the Act shall file a notice of appeal in the Court.

“(2) The notice of appeal shall be filed within 28 days after the date of the decision.

“(3) The notice of appeal shall state the nature of the decision appealed against, and whether the appeal is from the whole or part only, and, if so, what part of the decision. It shall also state concisely the grounds of the appeal.

“(4) Except with the leave of the Court, which may be granted on such terms as may be just, no grounds other than those so stated shall be allowed to be taken by the appellant at the hearing.

“(5) The appellant shall, within 7 days of filing the notice of appeal, send a copy thereof to the Commissioner and any other party to the proceedings before the Commissioner.

“(6) On receiving the notice of appeal, the Commissioner shall forthwith transmit to the Court all the papers relating to the matter the subject of the appeal.

“(7) Except by leave of the Court, no appeal shall be entertained unless notice of appeal has been given within the period specified in subclause (2) of this rule.

“26A. (1) A respondent who has not appealed from the decision of the Commissioner, but desires to contend on the appeal that the decision should be varied either in any event or in the event of the appeal being allowed in whole or in part, shall give notice to that effect, specifying the grounds of that contention and the relief which he seeks

from the Court. It shall not be necessary for any such respondent to file a further notice of appeal under rule 26 of these rules.

“(2) A respondent who desires to contend on the appeal that the decision of the Commissioner should be affirmed on grounds other than those set out in the decision shall give notice to that effect specifying the grounds of that contention.

“(3) A respondent’s notice shall be sent to the Commissioner and to the appellant and every other party to the proceedings before the Commissioner within 28 days after the date of the receipt of the notice of appeal by the respondent or within such further time as the Court may direct.

“(4) A party by whom a respondent’s notice is given shall, within 7 days after the date of the service of the notice on the appellant, furnish 2 copies of the notice to the Court.

“(5) Where more than one party files a notice of appeal in accordance with these rules, any party to the proceedings, whether or not that party has filed a notice of appeal, may file a respondent’s notice in respect of any notice of appeal given by any other party.

“26B. An appeal to the Court shall be by way of rehearing, and the evidence used on appeal shall be the same as that used before the Commissioner, and no further evidence shall be given, except with the leave of the Court.

“26c. (1) Subject to the provisions of this rule all proceedings before the Court shall be heard and determined in public unless in any particular case the Court directs that they shall be heard in private.

“(2) Proceedings before the Court relating to a decision of the Commissioner in any case in which the complete specification of the patent application has not been published shall be heard and determined in private unless the Court directs that they shall be heard in public.

“(3) A direction under this rule may be given by the Court either of its own motion or on the application of a party to the proceedings, and the direction may relate to all the proceedings or to any specified part of them.

“26d. (1) The rules applicable to the filing of documentary evidence on proceedings before the Commissioner shall apply to documentary evidence filed on an appeal to the Court.

“(2) The Court may, at the request of any party, order the attendance at the hearing, for the purpose of cross examination, of any person who has made a statutory declaration or sworn an affidavit in the matter to which the appeal relates.

“(3) Any person requiring the attendance of a witness for cross examination shall tender to the witness whose attendance is required the appropriate fees, allowances, and travelling expenses payable to any witness in accordance with the appropriate scales specified in the Schedule to the Witnesses and Interpreters Fees Regulations 1974*.

“26E. The Court may, in awarding costs, either fix the amount thereof or direct by whom and in what manner the amount of the costs is to be ascertained.”

P. G. MILLEN,
Clerk of the Executive Council.

EXPLANATORY NOTE

This note is not part of the rules, but is intended to indicate their general effect.

These rules vary and expand the provisions of the principal rules relating to scientific advisers and appeals.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 13 May 1976.

These rules are administered in the Department of Justice.