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### Practice:

Amendments to the PCT Regulations were adopted and came into force in Singapore on 1<sup>st</sup> April 2007.

These amendments apply to PCT applications filed on or after 1<sup>st</sup> April 2007 and relate to the following:–

- late declaration of priority, i.e. restoration of right of priority
- treatment of description not included in application as filed, i.e. incorporation by reference of description
- treatment of parts missing from the specification as filed, i.e. incorporation by reference of missing parts

### Case law:

In 2007, there were two significant cases before the Court of Appeal touching on the defence of innocent infringement of a patent in 2007. Section 69(1) of Singapore Patents Act absolves a person who infringes a patent from liability to pay damages or give an account of profits if he was not aware that a patent exists.

These are:

- (1) Seiko Epson Corporation vs Sepoms Technology Pte Ltd (“the Sepom case”)
- (2) Main-Line Corporate Holdings Ltd vs UOB (“the Main-Line case”)

The issue in the **Sepom** case was whether section 69(1) operates as a defence to liability and not merely as a bar to damages. The Defendant Sepom had consented to judgement in respect of infringement of Seiko’s patent. The controversy arose thereafter. According to the terms of the Consent Judgement the parties agreed that there would be an account of profits in favour of Seiko. So the matter proceeded for an account of profits. Sepom had pleaded that it did not know and had no reason to believe that a patent existed and was infringed by it. Here Sepom went on to elaborate on the defence of innocent infringement stating that it had no knowledge of the infringement until proceedings were served on it. Sepom claimed that the account of profits should start from that date.

Seiko on the other hand alleged that the period of assessment should run from the date the patent was published. They also alleged that Sepom was estopped from raising the defence of innocent infringement as it had earlier consented to judgement.

The issue was whether section 69(1) was a defence to liability and not merely a restriction on the relief awardable.

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The Court of Appeal held that section 69(1) would apply only after infringement is established as a fact and not before. Section 69(1) was not a defence to liability and serves as a restriction to the relief awardable. Further, consenting to judgement does not mean the abandonment of the protection under section 69(1) by Sepom. Sepom was not estopped from invoking section 69(1).

In the earlier Court of Appeal decision in **Main-Line** case the issues for consideration was whether section 69(1) must be specifically pleaded as a defence. The case had proceeded in the normal way to trial. During the hearing the Defendant sought to rely on the defences of innocent infringement as an alternative defence when contesting the Plaintiff's case on whether there was in fact any infringement. The defence did not positively plead this defence. The Court found that the defence must be pleaded, it was not sufficient to merely raise it by way of implication or denial to relevant parts of the Plaintiff's Statement of Claim. The defence must be pleaded and sufficiently particularized for evidence to be led by a Defendant to prove innocence. Notwithstanding that the Court made this ruling, they did in fact consider the Defendant's defence of innocent infringement, so no injustice was done to the Defendant.

However following the subsequent decision in the **Sepom** case it is clear that the defence of innocent infringement under section 69(1) arose only after infringement is established and not before. Surely by implication it means that section 69(1) need not be pleaded as a defence to liability. It may be invoked to restrict the awardable relief.

The next issue considered in the **Main-Line** case was whether the publication of the patent application in the Patents Journal is constructive notice to a potential infringer so as to negate the defence of innocent infringement. Every patent application will be published at least once after it has been filed, usually at 18 months. Can such publication be used to infer knowledge in an appropriate case? The Court held that the mere publication of the patent application should not be deemed to put the Defence on notice, as the publication are not widely circulated and the Defendant was not in the same industry as the Plaintiff and cannot be expected to keep track of new technology which is not in the same field as the Defendant.

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