

Section 291: Proceedings in patents county court

291.01 This covers two distinct areas affecting proceedings in the patents county court: the first the nomination and duties of a judge, and secondly the appointment and remuneration of advisers or assessors to assist the Court, and the provision of reports by the Office.

291.02 Section 291 requires county court rules to make appropriate provision in the above respects, and such provision is made in the Civil Procedure Rules, particularly Part 63. This section 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 nominate a judge of the patents county court.

Section 291(1)

Where a county court is designated a patents county court, the Lord Chief Justice shall, after consulting the Lord Chancellor, nominate a person entitled to sit as a judge of that court as the patents judge.

Section 291(2)

County court rules shall make provision for securing that, so far as is practicable and appropriate -

- (a) proceedings within the special jurisdiction of a patents county court are dealt with by the patents judge, and*
- (b) the judge, rather than a registrar or other officer of the court, deals with interlocutory matters in the proceedings.*

291.03 Subsections (1) and (2)(a) reflect the intention that business within the jurisdiction should only be handled by a judge with experience of patent litigation. Thus not only is a suitably qualified judge appointed to each court but also he handles, as far as is possible, all proceedings within the jurisdiction.

291.04 Subsection (2)(b) authorises rules providing for the patents judge to take charge of both the interlocutory proceedings and the trial.

Section 291(3)

County court rules shall make provision empowering a patents county court in proceedings within its special jurisdiction, on or without the application of any party -

- (a) to appoint scientific advisers or assessors to assist the court, or*
- (b) to order the Patent Office to inquire into and report on any question of fact or opinion.*

Section 291(4)

Where the court exercises either of those powers on the application of a party, the remuneration of fees payable to the Patent Office shall be at such rate as may be

determined in accordance with county court rules and shall be costs of the proceedings unless otherwise ordered by the judge.

CPR 35.15
CPR 63PD
para 4.10

291.05 County court rules provide for the court to have a power, on or without any party's application, to appoint scientific advisers or assessors to assist the court, or to order the Office to inquire into and report on any question of fact or opinion. Appointment of scientific advisers or assessors can be made under Section 70(3) of the Supreme Court Act and section 63 of the County Courts Act 1984; rule 35.15 of the Civil Procedure Rules covers their duties and remuneration. Paragraph 4.10 of the Practice Direction supplementing Part 63 of the Civil Procedure Rules allows the court to direct that a scientific adviser under Section 70(3) of the Supreme Court Act to be appointed at a case management conference.

291.06 Subsection (4) provides that where the court exercises either of the powers in subsection (3) on the application of a party, the remuneration or fees payable to the Office will be determined by county court rules and shall be the costs of the proceedings, unless the judge orders otherwise. Provision under subsection (4) is made by Rule 35.15(5) of the Civil Procedure Rules.

Section 291(5)

Where the court exercises either of those powers of its own motion, the remuneration or fees payable to the Patent Office shall be at such rate as may be determined by the Lord Chancellor with the approval of the Treasury and shall be paid out of money provided by Parliament.

291.07 Where the court exercises either power under subsection (3) of its own motion, the remuneration or fees will be paid out of public funds. This reflects the provisions of the Patents Act 1977 and Rule 35.15(7) of the Civil Procedure Rules.

Section 291(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 subsection (1).

291.08 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 nominating a judge for the patents county court.