



THE PATENTS ACT, 1970

Section 105

Power of court to make declaration as to non-infringement

(1) Notwithstanding anything contained in section 34 of the [Specific Relief Act, 1963 \(47 of 1963\)](#), any person may institute a suit for a declaration that the use by him of any process, or the making, use or sale of any article by him does not, or would not, constitute an infringement of a claim of a patent against the patentee or the holder of an exclusive licence under the patent, notwithstanding that no assertion to the contrary has been made by the patentee or the licensee, if it is shown—

(a) that the plaintiff has applied in writing to the patentee or exclusive licensee for a written acknowledgement to the effect of the declaration claimed and has furnished him with full particulars in writing of the process or article in question; and

(b) that the patentee or licensee has refused or neglected to give such an acknowledgement.

(2) The costs of all parties in a suit for a declaration brought by virtue of this section shall, unless for special reasons the court thinks fit to order otherwise, be paid by the plaintiff.

(3) The validity of a claim of the specification of a patent shall not be called in question in a suit for a declaration brought by virtue of this section, and accordingly the making or refusal of such a declaration in the case of a patent shall not be deemed to imply that the patent is valid or invalid.

(4) A suit for a declaration may be brought by virtue of this section at any time after the publication of grant of a patent, and references in this section to the patentee shall be construed accordingly.

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