

"knowing the entry or writing to be false"

"literally true"

CIPA
Guido, 15th
Ed.

Falsification of register etc.

109. If a person makes or causes to be made a false entry in any register kept under this Act, or a writing falsely purporting to be a copy or reproduction of an entry in any such register, or produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, he shall be liable—

- (a) on summary conviction to a fine not exceeding the prescribed sum [£1,000],
- (b) on conviction on indictment [information in the Isle of Man], to imprisonment for a term not exceeding two years or a fine, or both.

Note. Subsection (a) was amended by the Magistrates' Courts Act 1980 (c. 43, s. 32(2)) and subsection (b) by S.I. 1978 No. 621.

COMMENTARY ON SECTION 109

Scope of the section

109.02

The offences under section 109 concern false entries in the register of patents and false copies thereof. Such an offence has existed since 1883, but no case appears to have been brought.

The offence is one triable "either way", i.e. by summary conviction or on indictment. In the summary jurisdiction the maximum fine is the "prescribed sum", a term which has been equated with the term "statutory maximum fine" used in other statutes (Criminal Justice Act 1982, c. 48, s. 75). This latter term is now defined (variously for England and Wales, Scotland and Northern Ireland) in the Interpretation Act 1978 (c. 30, Sched. 1, as amended by the Criminal Justice Act 1988, c. 33, Sched. 15, para. 58). It presently stands at £5,000 (Criminal Justice Act 1991, c. 53, s. 17). Although there is no limit specified for a fine on indictment, this must not be excessive (Bill of Rights 1688, c. 2, s. 1) and must be within the offender's capacity to pay (*R. v. Churchill (No. 2)* [1967] 1 QB 190 (CCA); and *R. v. Garnier* [1986] 1 WLR 73; [1986] 1 All ER 78 (CA)). Where a company commits the offence, its officers may be liable under section 113, see § 113.02.

Knowing the entry or writing to be false

109.03

The offences under section 109 require the offender to have knowledge that the register entry or copy is false. A statement which is literally true may be false if an omission creates clearly and intentionally a belief which is wrong (*R. v. Bishirian* [1936] 1 All ER 586 (CCA)). Whether the person responsible for the falsehood gains by it is not relevant (*Barras v. Reeve* [1980] 3 All ER 705).

PART III, SECTION 109

Proof of a person's knowledge can be based on evidence that he "deliberately shut his eyes to the obvious or refrained from inquiry" because he suspected the truth but did not wish to have his suspicions confirmed" (*Westminster City Council v. Croyalgrange* [1986] 2 All ER 353; [1986] 1 WLR 674 (HL) per Lord Bridge). The knowledge of an employee or agent may be imputed to his employer or principal where control of the work was delegated to him (*Vane v. Yarnopoulos* [1965] AC 486; [1964] 3 All ER 820 (HL)), but, in the absence of control or delegation, criminal acts by an employee are not imputed to his employer (*Tesco v. Natrass* [1972] AC 153; [1971] 2 All ER 127 (HL)).

(S.I. 1981 No. 161 s. 2(1)(b)).

Penalties under t

Offences under s is now defined by r is variously defined Act 1978 (c. 30, Sc 15, para. 58), and " s. 17). Where a con under section 113, Besides giving ri marker to discreti infringement or pas *MacNish* (1896) 13 Trade Descriptions section 2(1) of that

Meaning of "pat

An offence under a term defined in se which a patented p 60(1)(a) and (c). Tl (indirect) act of infr make that article a The patent in qui was imposed in Ca.

110.01

SECTION 110

CEBp.536

Unauthorised claim of patent rights

110.—(1) If a person falsely represents that anything disposed of by him for value is a patented product he shall, subject to the following provisions of this section, be liable on summary conviction to a fine not exceeding level 3 on the standard scale [£200].

(2) For the purposes of subsection (1) above a person who for value disposes of an article having stamped, engraved or impressed on it or otherwise applied to it the word patent or "patented" or anything expressing or implying that the article is a patented product, shall be taken to represent that the article is a patented product.

(3) Subsection (1) above does not apply where the representation is made in respect of a product after the patent for that product or, as the case may be, the process in question has expired or been revoked and before the end of a period which is reasonably sufficient to enable the accused to take steps to ensure that [the process] is not made (or does not continue to be made).