

2002—Pub. L. 107-273, div. C, title III, §13206(a)(17), Nov. 2, 2002, 116 Stat. 1905, inserted a comma after “Patent” in item for chapter 29.

1999—Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §4604(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A-570, as amended by Pub. L. 107-273, div. C, title III, §13202(c)(2), Nov. 2, 2002, 116 Stat. 1902, substituted “Ex Parte Reexamination of Patents” for “Reexamination of Patents” in item for chapter 30 and added item for chapter 31.

1982—Pub. L. 97-256, title I, §101(7), Sept. 8, 1982, 96 Stat. 816, added item for chapter 30.

CHAPTER 25—AMENDMENT AND CORRECTION OF PATENTS

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- 251. Reissue of defective patents.
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AMENDMENTS

2011—Pub. L. 112-29, §12(b), Sept. 16, 2011, 125 Stat. 327, added item 257.

2002—Pub. L. 107-273, div. C, title III, §13206(a)(18), Nov. 2, 2002, 116 Stat. 1905, substituted “Correction of named inventor” for “Misjoinder of inventor” in item 256.

1975—Pub. L. 93-596, §1, Jan. 2, 1975, 88 Stat. 1949, substituted “Patent and Trademark Office” for “Patent Office” in item 254.

§ 251. Reissue of defective patents

(a) IN GENERAL.—Whenever any patent is, through error, deemed wholly or partly inoperative or invalid, by reason of a defective specification or drawing, or by reason of the patentee claiming more or less than he had a right to claim in the patent, the Director shall, on the surrender of such patent and the payment of the fee required by law, reissue the patent for the invention disclosed in the original patent, and in accordance with a new and amended application, for the unexpired part of the term of the original patent. No new matter shall be introduced into the application for reissue.

(b) MULTIPLE REISSUED PATENTS.—The Director may issue several reissued patents for distinct and separate parts of the thing patented, upon demand of the applicant, and upon payment of the required fee for a reissue for each of such reissued patents.

(c) APPLICABILITY OF THIS TITLE.—The provisions of this title relating to applications for patent shall be applicable to applications for reissue of a patent, except that application for reissue may be made and sworn to by the assignee of the entire interest if the application does not seek to enlarge the scope of the claims of the original patent or the application for the original patent was filed by the assignee of the entire interest.

(d) REISSUE PATENT ENLARGING SCOPE OF CLAIMS.—No reissued patent shall be granted enlarging the scope of the claims of the original patent unless applied for within two years from the grant of the original patent.

(July 19, 1952, ch. 950, 66 Stat. 808; Pub. L. 106-113, div. B, §1000(a)(9) [title IV,

§4732(a)(10)(A)], Nov. 29, 1999, 113 Stat. 1536, 1501A-582; Pub. L. 107-273, div. C, title III, §13206(b)(1)(B), Nov. 2, 2002, 116 Stat. 1906; Pub. L. 112-29, §§4(b)(2), 20(d), Sept. 16, 2011, 125 Stat. 296, 333.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §64 (R.S. 4916, amended May 24, 1928, ch. 730, 45 Stat. 732.)

The sentences of the corresponding section of existing statute are rearranged and divided into two sections with some changes in language. The clause at the end of the present statute is omitted as obsolete.

The third paragraph incorporates by reference the requirements of other applications, and adds a new provision relating to application for reissue being made in certain cases by the assignee.

A two year period of limitation on applying for broadened reissues is added, codifying the present rule of decision with a fixed period.

AMENDMENTS

2011—Pub. L. 112-29, §20(d), designated first to fourth pars. as subsecs. (a) to (d), respectively, inserted headings, and, in subsec. (a), struck out “without any deceptive intention” after “error”.

Pub. L. 112-29, §4(b)(2), in third par., inserted “or the application for the original patent was filed by the assignee of the entire interest” after “claims of the original patent”.

2002—Pub. L. 107-273 made technical correction to directory language of Pub. L. 106-113. See 1999 Amendment note below.

1999—Pub. L. 106-113, as amended by Pub. L. 107-273, substituted “Director” for “Commissioner” in first and second pars.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by section 4(b)(2) of Pub. L. 112-29 effective upon the expiration of the 1-year period beginning on Sept. 16, 2011, and applicable to any patent application that is filed on or after that effective date, see section 4(e) of Pub. L. 112-29, set out as a note under section 111 of this title.

Amendment by section 20(d) of Pub. L. 112-29 effective upon the expiration of the 1-year period beginning on Sept. 16, 2011, and applicable to proceedings commenced on or after that effective date, see section 20(l) of Pub. L. 112-29, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106-113, set out as a note under section 1 of this title.

§ 252. Effect of reissue

The surrender of the original patent shall take effect upon the issue of the reissued patent, and every reissued patent shall have the same effect and operation in law, on the trial of actions for causes thereafter arising, as if the same had been originally granted in such amended form, but in so far as the claims of the original and reissued patents are substantially identical, such surrender shall not affect any action then pending nor abate any cause of action then existing, and the reissued patent, to the extent that its claims are substantially identical with the original patent, shall constitute a continuation thereof and have effect continuously from the date of the original patent.

A reissued patent shall not abridge or affect the right of any person or that person's succes-

sors in business who, prior to the grant of a reissue, made, purchased, offered to sell, or used within the United States, or imported into the United States, anything patented by the reissued patent, to continue the use of, to offer to sell, or to sell to others to be used, offered for sale, or sold, the specific thing so made, purchased, offered for sale, used, or imported unless the making, using, offering for sale, or selling of such thing infringes a valid claim of the reissued patent which was in the original patent. The court before which such matter is in question may provide for the continued manufacture, use, offer for sale, or sale of the thing made, purchased, offered for sale, used, or imported as specified, or for the manufacture, use, offer for sale, or sale in the United States of which substantial preparation was made before the grant of the reissue, and the court may also provide for the continued practice of any process patented by the reissue that is practiced, or for the practice of which substantial preparation was made, before the grant of the reissue, to the extent and under such terms as the court deems equitable for the protection of investments made or business commenced before the grant of the reissue.

(July 19, 1952, ch. 950, 66 Stat. 808; Pub. L. 103-465, title V, §533(b)(2), Dec. 8, 1994, 108 Stat. 4989; Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §4507(8)], Nov. 29, 1999, 113 Stat. 1536, 1501A-566.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §64 (R.S. 4916, amended May 24, 1928, ch. 730, 45 Stat. 732.)

The first paragraph follows the present section with some rearrangement in language. The second paragraph adds new provisions for the protection of intervening rights, the court is given discretion to protect legitimate activities which would be adversely affected by the grant of a reissue and things made before the grant of the reissue are not subject to the reissue unless a claim of the original patent which is repeated in the reissue is infringed.

AMENDMENTS

1999—Pub. L. 106-113 inserted “substantially” before “identical” in two places in first par.

1994—Pub. L. 103-465 amended second par. generally. Prior to amendment, second par. read as follows: “No reissued patent shall abridge or affect the right of any person or his successors in business who made, purchased or used prior to the grant of a reissue anything patented by the reissued patent, to continue the use of, or to sell to others to be used or sold, the specific thing so made, purchased or used, unless the making, using or selling of such thing infringes a valid claim of the reissued patent which was in the original patent. The court before which such matter is in question may provide for the continued manufacture, use or sale of the thing made, purchased or used as specified, or for the manufacture, use or sale of which substantial preparation was made before the grant of the reissue, and it may also provide for the continued practice of any process patented by the reissue, practice, or for the practice of which substantial preparation was made, prior to the grant of the reissue, to the extent and under such terms as the court deems equitable for the protection of investments made or business commenced before the grant of the reissue.”

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-113 effective Nov. 29, 2000, and applicable only to applications (including international applications designating the United States)

filed on or after that date, see section 1000(a)(9) [title IV, §4508] of Pub. L. 106-113, as amended, set out as a note under section 10 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-465 effective on date that is one year after date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], with provisions relating to earliest filed patent application, see section 534(a), (b)(3) of Pub. L. 103-465, set out as a note under section 154 of this title.

§ 253. Disclaimer

(a) IN GENERAL.—Whenever a claim of a patent is invalid the remaining claims shall not thereby be rendered invalid. A patentee, whether of the whole or any sectional interest therein, may, on payment of the fee required by law, make disclaimer of any complete claim, stating therein the extent of his interest in such patent. Such disclaimer shall be in writing, and recorded in the Patent and Trademark Office; and it shall thereafter be considered as part of the original patent to the extent of the interest possessed by the disclaimant and by those claiming under him.

(b) ADDITIONAL DISCLAIMER OR DEDICATION.—In the manner set forth in subsection (a), any patentee or applicant may disclaim or dedicate to the public the entire term, or any terminal part of the term, of the patent granted or to be granted.

(July 19, 1952, ch. 950, 66 Stat. 809; Pub. L. 93-596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 112-29, §20(e), Sept. 16, 2011, 125 Stat. 334.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §65 (R.S. 4917).

Language is changed and substantive changes are introduced; (1) only a claim as a whole may be disclaimed, and (2) the provision regarding delay is omitted. See preliminary general description of bill.

See section 288.

The second paragraph is new and provides for the disclaiming or dedication of an entire patent, or any terminal part of the term, for example, a patentee may disclaim the last three years of the term of his patent.

AMENDMENTS

2011—Pub. L. 112-29 designated first and second pars. as subsecs. (a) and (b), respectively, inserted headings, in subsec. (a), substituted “Whenever” for “Whenever, without any deceptive intention,” and, in subsec. (b), substituted “In the manner set forth in subsection (a),” for “In like manner”.

1975—Pub. L. 93-596 substituted “Patent and Trademark Office” for “Patent Office”.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112-29 effective upon the expiration of the 1-year period beginning on Sept. 16, 2011, and applicable to proceedings commenced on or after that effective date, see section 20(l) of Pub. L. 112-29, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

§ 254. Certificate of correction of Patent and Trademark Office mistake

Whenever a mistake in a patent, incurred through the fault of the Patent and Trademark