

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