

before or after that date, see section 9 of Pub. L. 99-616, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 401(a) of Pub. L. 98-622 effective six months after Nov. 8, 1984, see section 406(b) of Pub. L. 98-622, set out as a note under section 3 of this title.

Amendment by section 403(a) of Pub. L. 98-622 effective Nov. 8, 1984, see section 406(a) of Pub. L. 98-622, set out as a note under section 351 of this title.

EFFECTIVE DATE

Chapter effective Jan. 24, 1978, and applicable to international and national applications filed on and after that date, see section 11 of Pub. L. 94-131, set out as a note under section 351 of this title.

§ 362. International Searching Authority and International Preliminary Examining Authority

(a) The Patent and Trademark Office may act as an International Searching Authority and International Preliminary Examining Authority with respect to international applications in accordance with the terms and conditions of an agreement which may be concluded with the International Bureau, and may discharge all duties required of such Authorities, including the collection of handling fees and their transmittal to the International Bureau.

(b) The handling fee, preliminary examination fee, and any additional fees due for international preliminary examination shall be paid within such time as may be fixed by the Director.

(Added Pub. L. 94-131, §1, Nov. 14, 1975, 89 Stat. 686; amended Pub. L. 98-622, title IV, §403(a), Nov. 8, 1984, 98 Stat. 3392; Pub. L. 99-616, §4, Nov. 6, 1986, 100 Stat. 3485; 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.)

AMENDMENTS

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

1999—Subsec. (b). Pub. L. 106-113, as amended by Pub. L. 107-273, substituted “Director” for “Commissioner”.

1986—Pub. L. 99-616 inserted “and International Preliminary Examining Authority” in section catchline and amended text generally. Prior to amendment, text read as follows: “The Patent and Trademark Office may act as an International Searching Authority with respect to international applications in accordance with the terms and conditions of an agreement which may be concluded with the International Bureau.”

1984—Pub. L. 98-622 substituted “Patent and Trademark Office” for “Patent Office”.

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.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-616 effective July 1, 1987, and applicable to all international applications pending before or after that date, see section 9 of Pub. L. 99-616, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-622 effective Nov. 8, 1984, see section 406(a) of Pub. L. 98-622, set out as a note under section 351 of this title.

§ 363. International application designating the United States: Effect

An international application designating the United States shall have the effect, from its international filing date under article 11 of the treaty, of a national application for patent regularly filed in the Patent and Trademark Office.

(Added Pub. L. 94-131, §1, Nov. 14, 1975, 89 Stat. 686; amended Pub. L. 98-622, title IV, §403(a), Nov. 8, 1984, 98 Stat. 3392; Pub. L. 112-29, §§3(g)(3), 20(j), Sept. 16, 2011, 125 Stat. 288, 335.)

AMENDMENTS

2011—Pub. L. 112-29, §20(j), struck out “of this title” after “102(e)”.

Pub. L. 112-29, §3(g)(3), which directed the striking out of “except as otherwise provided in section 102(e) of this title”, was executed by striking out “except as otherwise provided in section 102(e)” before period at end, to reflect the probable intent of Congress, because the words “of this title” did not appear subsequent to amendment by Pub. L. 112-29, §20(j). See note above and Effective Date of 2011 Amendment notes below.

1984—Pub. L. 98-622 substituted “Patent and Trademark Office” for “Patent Office”.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by section 3(g)(3) of Pub. L. 112-29 effective upon the expiration of the 18-month period beginning on Sept. 16, 2011, and applicable to certain applications for patent and any patents issuing thereon, see section 3(n) of Pub. L. 112-29, set out as an Effective Date of 2011 Amendment; Savings Provisions note under section 100 of this title.

Amendment by section 20(j) 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 1984 AMENDMENT

Amendment by Pub. L. 98-622 effective Nov. 8, 1984, see section 406(a) of Pub. L. 98-622, set out as a note under section 351 of this title.

§ 364. International stage: Procedure

(a) International applications shall be processed by the Patent and Trademark Office when acting as a Receiving Office, International Searching Authority, or International Preliminary Examining Authority, in accordance with the applicable provisions of the treaty, the Regulations, and this title.

(b) An applicant's failure to act within prescribed time limits in connection with requirements pertaining to a pending international application may be excused upon a showing satisfactory to the Director of unavoidable delay, to the extent not precluded by the treaty and the Regulations, and provided the conditions imposed by the treaty and the Regulations regarding the excuse of such failure to act are complied with.

(Added Pub. L. 94-131, §1, Nov. 14, 1975, 89 Stat. 686; amended Pub. L. 98-622, title IV, §403(a), Nov. 8, 1984, 98 Stat. 3392; Pub. L. 99-616, §5, Nov. 6, 1986, 100 Stat. 3485; 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. 112-211, title II, §202(b)(8), Dec. 18, 2012, 126 Stat. 1536.)

AMENDMENT OF SECTION

Pub. L. 112-211, title II, §§202(b)(8), 203, Dec. 18, 2012, 126 Stat. 1536, provided that, effective on the date that is 1 year after Dec. 18, 2012, applicable to patents issued before, on, or after that effective date and patent applications pending on or filed after that effective date, and not effective with respect to patents in litigation commenced before that effective date, this section is amended by striking subsection (b) and inserting the following:

(b) An applicant's failure to act within prescribed time limits in connection with requirements pertaining to an international application may be excused as provided in the treaty and the Regulations.

See 2012 Amendment note below.

AMENDMENTS

2012—Subsec. (b). Pub. L. 112-211 added subsec. (b) and struck out former subsec. (b) which read as follows: “An applicant's failure to act within prescribed time limits in connection with requirements pertaining to a pending international application may be excused upon a showing satisfactory to the Director of unavoidable delay, to the extent not precluded by the treaty and the Regulations, and provided the conditions imposed by the treaty and the Regulations regarding the excuse of such failure to act are complied with.”

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

1999—Subsec. (b). Pub. L. 106-113, as amended by Pub. L. 107-273, substituted “Director” for “Commissioner”.

1986—Subsec. (a). Pub. L. 99-616 substituted a comma for “or” before “International Searching Authority” and “International Preliminary Examining Authority” for “both”.

1984—Subsec. (a). Pub. L. 98-622 substituted “Patent and Trademark Office” for “Patent Office”.

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112-211 effective on the date that is 1 year after Dec. 18, 2012, applicable to patents issued before, on, or after that effective date and patent applications pending on or filed after that effective date, and not effective with respect to patents in litigation commenced before that effective date, see section 203 of Pub. L. 112-211, set out as an Effective Date note under section 27 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.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-616 effective July 1, 1987, and applicable to all international applications pending before or after that date, see section 9 of Pub. L. 99-616, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-622 effective Nov. 8, 1984, see section 406(a) of Pub. L. 98-622, set out as a note under section 351 of this title.

§ 365. Right of priority; benefit of the filing date of a prior application

(a) In accordance with the conditions and requirements of subsections (a) through (d) of sec-

tion 119, a national application shall be entitled to the right of priority based on a prior filed international application which designated at least one country other than the United States.

(b) In accordance with the conditions and requirement of section 119(a) and the treaty and the Regulations, an international application designating the United States shall be entitled to the right of priority based on a prior foreign application, or a prior international application designating at least one country other than the United States.

(c) In accordance with the conditions and requirements of section 120, an international application designating the United States shall be entitled to the benefit of the filing date of a prior national application or a prior international application designating the United States, and a national application shall be entitled to the benefit of the filing date of a prior international application designating the United States. If any claim for the benefit of an earlier filing date is based on a prior international application which designated but did not originate in the United States, the Director may require the filing in the Patent and Trademark Office of a certified copy of such application together with a translation thereof into the English language, if it was filed in another language.

(Added Pub. L. 94-131, §1, Nov. 14, 1975, 89 Stat. 686; amended Pub. L. 98-622, title IV, §403(a), Nov. 8, 1984, 98 Stat. 3392; Pub. L. 103-465, title V, §532(c)(4), Dec. 8, 1994, 108 Stat. 4987; 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, §20(j), Sept. 16, 2011, 125 Stat. 335; Pub. L. 112-211, title I, §102(8), title II, §201(c)(2), Dec. 18, 2012, 126 Stat. 1532, 1535.)

AMENDMENT OF SUBSECTIONS (b) AND (c)

Pub. L. 112-211, title II, §§201(c)(2), 203, Dec. 18, 2012, 126 Stat. 1535, 1536, provided that, effective on the date that is 1 year after Dec. 18, 2012, applicable to patents issued before, on, or after that effective date and patent applications pending on or filed after that effective date, and not effective with respect to patents in litigation commenced before that effective date, subsection (b) of this section is amended by adding at the end the following: “The Director may establish procedures, including the requirement for payment of the fee specified in section 41(a)(7), to accept an unintentionally delayed claim for priority under the treaty and the Regulations, and to accept a priority claim that pertains to an application that was not filed within the priority period specified in the treaty and Regulations, but was filed within the additional 2-month period specified under section 119(a) or the treaty and Regulations.” See 2012 Amendment note below.

Pub. L. 112-211, title I, §§102(8), 103, Dec. 18, 2012, 126 Stat. 1532, provided that, effective on the later of the date that is 1 year after Dec. 18, 2012, or the date that the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs enters into force with respect to the United States, and applicable only to certain applications filed on