

records and information in the United States Patent and Trademark Office, except for personnel or other privileged information and information concerning patent applications required to be kept in confidence by section 122.

(g) **APPLICABILITY OF CERTAIN ETHICS LAWS.**—Members of each Advisory Committee shall be special Government employees within the meaning of section 202 of title 18.

(h) **INAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.**—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to each Advisory Committee.

(i) **OPEN MEETINGS.**—The meetings of each Advisory Committee shall be open to the public, except that each Advisory Committee may by majority vote meet in executive session when considering personnel, privileged, or other confidential information.

(j) **INAPPLICABILITY OF PATENT PROHIBITION.**—Section 4 shall not apply to voting members of the Advisory Committees.

(Added Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4714], Nov. 29, 1999, 113 Stat. 1536, 1501A–578; amended Pub. L. 107–273, div. C, title III, §§13203(b), 13206(a)(3), Nov. 2, 2002, 116 Stat. 1902, 1904; Pub. L. 112–274, §1(l)(1), Jan. 14, 2013, 126 Stat. 2458.)

#### REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (h), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

#### PRIOR PROVISIONS

A prior section 5, act July 19, 1952, ch. 950, 66 Stat. 793, related to bond of Commissioner and other officers, prior to repeal by Pub. L. 92–310, title II, §208(a), June 6, 1972, 86 Stat. 203.

#### AMENDMENTS

2013—Subsec. (a)(1). Pub. L. 112–274, §1(l)(1)(A), substituted “In each year, 3 members shall be appointed to each Advisory Committee for 3-year terms that shall begin on December 1 of that year. Any vacancy on an Advisory Committee shall be filled within 90 days after it occurs. A new member who is appointed to fill a vacancy shall be appointed to serve for the remainder of the predecessor’s term.” for “Members of each Public Advisory Committee shall be appointed for a term of 3 years, except that of the members first appointed, three shall be appointed for a term of 1 year, and three shall be appointed for a term of 2 years. In making appointments to each Committee, the Secretary of Commerce shall consider the risk of loss of competitive advantage in international commerce or other harm to United States companies as a result of such appointments.”

Subsec. (a)(2). Pub. L. 112–274, §1(l)(1)(B), added par. (2) and struck out former par. (2). Prior to amendment, text read as follows: “The Secretary shall designate a chair of each Advisory Committee, whose term as chair shall be for 3 years.”

Subsec. (a)(3). Pub. L. 112–274, §1(l)(1)(C), struck out par. (3). Text read as follows: “Initial appointments to each Advisory Committee shall be made within 3 months after the effective date of the Patent and Trademark Office Efficiency Act. Vacancies shall be filled within 3 months after they occur.”

2002—Subsec. (e). Pub. L. 107–273, §13206(a)(3), struck out “, United States Code” after “title 5” in two places.

Subsec. (g). Pub. L. 107–273, §13206(a)(3), struck out “, United States Code” after “title 18”.

Subsec. (i). Pub. L. 107–273, §13203(b)(1), inserted “, privileged,” after “personnel”.

Subsec. (j). Pub. L. 107–273, §13203(b)(2), added subsec. (j).

#### EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–274, §1(n), Jan. 14, 2013, 126 Stat. 2459, provided that: “Except as otherwise provided in this Act [amending this section and sections 42, 115, 123, 135, 154, 299, and 311 of this title, repealing section 373 of this title, enacting provisions set out as notes under this section and sections 2, 135, 298, and 311 of this title, and amending provisions set out as a note under section 321 of this title], the amendments made by this Act shall take effect on the date of enactment of this Act [Jan. 14, 2013], and shall apply to proceedings commenced on or after such date of enactment.”

#### EFFECTIVE DATE

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

#### TRANSITION

Pub. L. 112–274, §1(l)(2), Jan. 14, 2013, 126 Stat. 2459, provided that:

“(A) **IN GENERAL.**—The Secretary of Commerce shall, in the Secretary’s discretion, determine the time and manner in which the amendments made by paragraph (1) [amending this section] shall take effect, except that, in each year following the year in which this Act is enacted [2013], 3 members shall be appointed to each Advisory Committee (to which such amendments apply) for 3-year terms that begin on December 1 of that year, in accordance with section 5(a) of title 35, United States Code, as amended by paragraph (1) of this subsection.

“(B) **DEEMED TERMINATION OF TERMS.**—In order to implement the amendments made by paragraph (1), the Secretary of Commerce may determine that the term of an existing member of an Advisory Committee under section 5 of title 35, United States Code, shall be deemed to terminate on December 1 of a year beginning after the date of the enactment of this Act [Jan. 14, 2013], regardless of whether December 1 is before or after the date on which such member’s term would terminate if this Act had not been enacted.”

### § 6. Patent Trial and Appeal Board

(a) **IN GENERAL.**—There shall be in the Office a Patent Trial and Appeal Board. The Director, the Deputy Director, the Commissioner for Patents, the Commissioner for Trademarks, and the administrative patent judges shall constitute the Patent Trial and Appeal Board. The administrative patent judges shall be persons of competent legal knowledge and scientific ability who are appointed by the Secretary, in consultation with the Director. Any reference in any Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to the Board of Patent Appeals and Interferences is deemed to refer to the Patent Trial and Appeal Board.

(b) **DUTIES.**—The Patent Trial and Appeal Board shall—

(1) on written appeal of an applicant, review adverse decisions of examiners upon applications for patents pursuant to section 134(a);

(2) review appeals of reexaminations pursuant to section 134(b);

(3) conduct derivation proceedings pursuant to section 135; and

(4) conduct inter partes reviews and post-grant reviews pursuant to chapters 31 and 32.

(c) 3-MEMBER PANELS.—Each appeal, derivation proceeding, post-grant review, and inter partes review shall be heard by at least 3 members of the Patent Trial and Appeal Board, who shall be designated by the Director. Only the Patent Trial and Appeal Board may grant re-hearings.

(d) TREATMENT OF PRIOR APPOINTMENTS.—The Secretary of Commerce may, in the Secretary's discretion, deem the appointment of an administrative patent judge who, before the date of the enactment of this subsection, held office pursuant to an appointment by the Director to take effect on the date on which the Director initially appointed the administrative patent judge. It shall be a defense to a challenge to the appointment of an administrative patent judge on the basis of the judge's having been originally appointed by the Director that the administrative patent judge so appointed was acting as a de facto officer.

(Added Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §4717(2)], Nov. 29, 1999, 113 Stat. 1536, 1501A-580; amended Pub. L. 107-273, div. C, title III, §13203(a)(2), Nov. 2, 2002, 116 Stat. 1902; Pub. L. 110-313, §1(a)(1), Aug. 12, 2008, 122 Stat. 3014; Pub. L. 112-29, §7(a)(1), Sept. 16, 2011, 125 Stat. 313.)

#### REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (d), probably means the date of enactment of Pub. L. 112-29, which amended this section generally and was approved Sept. 16, 2011.

#### PRIOR PROVISIONS

A prior section 6, acts July 19, 1952, ch. 950, 66 Stat. 793; Pub. L. 92-132, Oct. 5, 1971, 85 Stat. 364; Pub. L. 93-596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 94-131, §2, Nov. 14, 1975, 89 Stat. 690; Pub. L. 97-247, §§7, 13, Aug. 27, 1982, 96 Stat. 320, 321; Pub. L. 102-204, §8, Dec. 10, 1991, 105 Stat. 1641, related to duties of Commissioner, prior to repeal by Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §§4715(a), 4731], Nov. 29, 1999, 113 Stat. 1536, 1501A-580, 1501A-581, effective 4 months after Nov. 29, 1999.

#### AMENDMENTS

2011—Pub. L. 112-29 amended section generally. Prior to amendment, section related to the establishment, composition, and function of the Board of Patent Appeals and Interferences and to the appointment of administrative patent judges.

2008—Subsec. (a). Pub. L. 110-313, §1(a)(1)(A), (B), substituted "Deputy Director" for "Deputy Commissioner" in second sentence and "Secretary of Commerce, in consultation with the Director" for "Director" in last sentence.

Subsecs. (c), (d). Pub. L. 110-313, §1(a)(1)(C), which directed addition of subsecs. (c) and (d) at end of subsec. (a), was executed by adding subsecs. (c) and (d) at end of section to reflect the probable intent of Congress.

2002—Subsec. (a). Pub. L. 107-273, which directed amendment of subsec. (a) by inserting "the Deputy Commissioner," after "Commissioner," was executed by making the insertion after "The Director," to reflect the probable intent of Congress.

#### EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112-29, §7(e), Sept. 16, 2011, 125 Stat. 315, provided that: "The amendments made by this section [amending this section, sections 134, 141, and 143 of this title, section 1295 of Title 28, Judiciary and Judicial Procedure, section 2182 of Title 42, The Public Health and Welfare, and section 20135 of Title 51, National and Commercial Space Programs] shall take effect upon the

expiration of the 1-year period beginning on the date of the enactment of this Act [Sept. 16, 2011] and shall apply to proceedings commenced on or after that effective date, except that—

"(1) the extension of jurisdiction to the United States Court of Appeals for the Federal Circuit to entertain appeals of decisions of the Patent Trial and Appeal Board in reexaminations under the amendment made by subsection (c)(2) [amending section 1295 of Title 28] shall be deemed to take effect on the date of the enactment of this Act and shall extend to any decision of the Board of Patent Appeals and Interferences with respect to a reexamination that is entered before, on, or after the date of the enactment of this Act;

"(2) the provisions of sections 6, 134, and 141 of title 35, United States Code, as in effect on the day before the effective date of the amendments made by this section shall continue to apply to inter partes reexaminations that are requested under section 311 of such title before such effective date;

"(3) the Patent Trial and Appeal Board may be deemed to be the Board of Patent Appeals and Interferences for purposes of appeals of inter partes reexaminations that are requested under section 311 of title 35, United States Code, before the effective date of the amendments made by this section; and

"(4) the Director's [Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office] right under the fourth sentence of section 143 of title 35, United States Code, as amended by subsection (c)(3) of this section, to intervene in an appeal from a decision entered by the Patent Trial and Appeal Board shall be deemed to extend to inter partes reexaminations that are requested under section 311 of such title before the effective date of the amendments made by this section."

#### EFFECTIVE DATE

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

#### § 7. Library

The Director shall maintain a library of scientific and other works and periodicals, both foreign and domestic, in the Patent and Trademark Office to aid the officers in the discharge of their duties.

(July 19, 1952, ch. 950, 66 Stat. 793, §8; Pub. L. 93-596, §1, Jan. 2, 1975, 88 Stat. 1949; renumbered §7 and amended Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §§4717(1), 4732(a)(10)(A)], Nov. 29, 1999, 113 Stat. 1536, 1501A-580, 1501A-582; Pub. L. 107-273, div. C, title III, §13206(b)(1)(B), Nov. 2, 2002, 116 Stat. 1906.)

#### HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §10 (R.S. 486).

Some change in language has been made. "Purchased" is changed to "maintained" to include the existing library and keeping it up by additions. The phrase "and other" is added to include legal works. The last phrase of the corresponding section of the existing statute is omitted as unnecessary.

#### PRIOR PROVISIONS

A prior section 7, acts July 19, 1952, ch. 950, 66 Stat. 793; Pub. L. 85-933, §2, Sept. 6, 1958, 72 Stat. 1793; Pub. L. 86-370, §1(b), Sept. 23, 1959, 73 Stat. 650; Pub. L. 93-596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 93-601, §2, Jan. 2, 1975, 88 Stat. 1956; Pub. L. 98-622, title II, §201(a), Nov. 8, 1984, 98 Stat. 3386, established the Board of Patent Appeals and Interferences, prior to repeal by Pub.