

1997, as rural States under section 1501(b) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796b(b) [3796bb(b)]).”

#### WAIVER OF CERTAIN RESTRICTIONS

Pub. L. 102-204, §2(c), Dec. 10, 1991, 105 Stat. 1636, provided that: “Surcharges established for fiscal year 1992 under section 10101(c) of the Omnibus Budget Reconciliation Act of 1990 [Pub. L. 101-508, set out below] may take effect on or after 1 day after such surcharges are published in the Federal Register. Section 553 of title 5, United States Code, shall not apply to the establishment of such surcharges for fiscal year 1992.”

#### UNSPECIFIED PATENT FEES FOR FISCAL YEAR 1992; EFFECTIVE DATE CONTINGENT UPON PUBLICATION IN FEDERAL REGISTER

Pub. L. 102-204, §5(c)(2), Dec. 10, 1991, 105 Stat. 1639, provided that fees established by the Commissioner of Patents and Trademarks under subsec. (d) of this section during fiscal year 1992 could take effect on or after 1 day after being published in the Federal Register, and that former subsec. (g) of this section and section 553 of title 5 were not to apply to the establishment of such fees during fiscal year 1992.

#### PATENT INFORMATION DISSEMINATION

Pub. L. 102-204, §11, Dec. 10, 1991, 105 Stat. 1641, set out definitions, established a patent information demonstration program, stipulated the information to be disseminated, provided for fees for CD-ROM purchase, and required a report to Congress one year after Dec. 10, 1991.

#### SURCHARGES ON PATENT FEES

Pub. L. 101-508, title X, §10101(a)-(c), Nov. 5, 1990, 104 Stat. 1388-391, as amended by Pub. L. 102-204, §2(b), Dec. 10, 1991, 105 Stat. 1636; Pub. L. 103-66, title VIII, §8001, Aug. 10, 1993, 107 Stat. 402, provided for surcharges for fees under this section during fiscal years 1991 through 1998, and stipulated how surcharges would be used and credited in those fiscal years.

#### EFFECT ON OTHER LAWS

Pub. L. 101-508, title X, §10103, Nov. 5, 1990, 104 Stat. 1388-392, provided that: “Except for section 10101(d) [not classified to the Code], nothing in this subtitle [subtitle B (§§10101-10103) of title X of Pub. L. 101-508, enacting provisions set out as notes under this section and section 1 of this title] affects the provisions of Public Law 100-703 (102 Stat. 4674 and following) [see Tables for classification].”

#### PUBLIC ACCESS TO PATENT AND TRADEMARK OFFICE INFORMATION

Pub. L. 100-703, title I, §104(b), (c), Nov. 19, 1988, 102 Stat. 4675, provided that the Commissioner of Patents and Trademarks maintain patent and trademark collections, search rooms, and libraries for use by the public without fees and authorized establishment of fees for access by the public to automated search systems of the Patent and Trademark Office, prior to repeal by Pub. L. 102-204, §9, Dec. 10, 1991, 105 Stat. 1641. See section 41(i) of this title.

Pub. L. 99-607, §4, Nov. 6, 1986, 100 Stat. 3471, provided that the Commissioner of Patents and Trademarks could not impose a fee for use of public patent or trademark search rooms and libraries and that costs of such rooms and libraries should come from amounts appropriated by Congress, prior to repeal by Pub. L. 100-703, title I, §104(a), Nov. 19, 1988, 102 Stat. 4675.

#### PATENT FEES

Pub. L. 100-703, title I, §103(b), Nov. 19, 1988, 102 Stat. 4674, prohibited Commissioner of Patents and Trademarks, during fiscal years 1989, 1990, and 1991, from increasing fees established under subsec. (d) of this section, except for purposes of making adjustments which

in the aggregate did not exceed fluctuations during the previous three years in the Consumer Price Index, and from establishing additional fees under such section during such fiscal years. Similar provisions were contained in Pub. L. 99-607, §3(b), Nov. 6, 1986, 100 Stat. 3471.

Pub. L. 98-622, title IV, §404, Nov. 8, 1984, 98 Stat. 3392, provided that:

“(a) Notwithstanding section 41 of title 35, United States Code, as in effect before the enactment of Public Law 97-247 (96 Stat. 317) [Aug. 27, 1982], no fee shall be collected for maintaining a plant patent in force.

“(b) Notwithstanding section 41(c) of title 35, United States Code, as in effect before the enactment of Public Law 97-247 (96 Stat. 317) [Aug. 27, 1982], the Commissioner of Patents and Trademarks [now Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office] may accept, after the six-month grace period referred to in such section 41(c), the payment of any maintenance fee due on any patent based on an application filed in the Patent and Trademark Office on or after December 12, 1980, and before August 27, 1982, to the same extent as in the case of patents based on applications filed in the Patent and Trademark Office on or after August 27, 1982.”

#### § 42. Patent and Trademark Office funding

(a) All fees for services performed by or materials furnished by the Patent and Trademark Office will be payable to the Director.

(b) All fees paid to the Director and all appropriations for defraying the costs of the activities of the Patent and Trademark Office will be credited to the Patent and Trademark Office Appropriation Account in the Treasury of the United States.

(c)(1) To the extent and in the amounts provided in advance in appropriations Acts, fees authorized in this title or any other Act to be charged or established by the Director shall be collected by and shall, subject to paragraph (3), be available to the Director to carry out the activities of the Patent and Trademark Office.

(2) There is established in the Treasury a Patent and Trademark Fee Reserve Fund. If fee collections by the Patent and Trademark Office for a fiscal year exceed the amount appropriated to the Office for that fiscal year, fees collected in excess of the appropriated amount shall be deposited in the Patent and Trademark Fee Reserve Fund. To the extent and in the amounts provided in appropriations Acts, amounts in the Fund shall be made available until expended only for obligation and expenditure by the Office in accordance with paragraph (3).

(3)(A) Any fees that are collected under this title, and any surcharges on such fees, may only be used for expenses of the Office relating to the processing of patent applications and for other activities, services, and materials relating to patents and to cover a proportionate share of the administrative costs of the Office.

(B) Any fees that are collected under section 31 of the Trademark Act of 1946, and any surcharges on such fees, may only be used for expenses of the Office relating to the processing of trademark registrations and for other activities, services, and materials relating to trademarks and to cover a proportionate share of the administrative costs of the Office.

(d) The Director may refund any fee paid by mistake or any amount paid in excess of that required.

(e) The Secretary of Commerce shall, on the day each year on which the President submits the annual budget to the Congress, provide to the Committees on the Judiciary of the Senate and the House of Representatives—

(1) a list of patent and trademark fee collections by the Patent and Trademark Office during the preceding fiscal year;

(2) a list of activities of the Patent and Trademark Office during the preceding fiscal year which were supported by patent fee expenditures, trademark fee expenditures, and appropriations;

(3) budget plans for significant programs, projects, and activities of the Office, including out-year funding estimates;

(4) any proposed disposition of surplus fees by the Office; and

(5) such other information as the committees consider necessary.

(July 19, 1952, ch. 950, 66 Stat. 796; Pub. L. 94-131, § 4, Nov. 14, 1975, 89 Stat. 690; Pub. L. 96-517, § 3, Dec. 12, 1980, 94 Stat. 3018; Pub. L. 97-247, § 3(g), Aug. 27, 1982, 96 Stat. 319; Pub. L. 97-258, § 3(i), Sept. 13, 1982, 96 Stat. 1065; Pub. L. 102-204, §§ 4, 5(e), Dec. 10, 1991, 105 Stat. 1637, 1640; Pub. L. 105-358, § 4, Nov. 10, 1998, 112 Stat. 3274; Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, §§ 4205, 4732(a)(10)(A)], Nov. 29, 1999, 113 Stat. 1536, 1501A-555, 1501A-582; Pub. L. 107-273, div. C, title III, § 13206(b)(1)(B), Nov. 2, 2002, 116 Stat. 1906; Pub. L. 112-29, § 22(a), Sept. 16, 2011, 125 Stat. 336; Pub. L. 112-274, § 1(j), Jan. 14, 2013, 126 Stat. 2457.)

#### HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 79 (Mar. 6, 1920, ch. 94, § 1 (part), 41 Stat. 503, 512).

Language has been changed.

#### REFERENCES IN TEXT

Section 31 of the Trademark Act of 1946, referred to in subsec. (c)(3)(B), is classified to section 1113 of Title 15, Commerce and Trade.

#### AMENDMENTS

2013—Subsec. (c)(3)(A). Pub. L. 112-274, § 1(j)(1), substituted “this title,” for “sections 41, 42, and 376,” and “a proportionate share of the administrative costs of the Office” for “a share of the administrative costs of the Office relating to patents”.

Subsec. (c)(3)(B). Pub. L. 112-274, § 1(j)(2), substituted “a proportionate share of the administrative costs of the Office” for “a share of the administrative costs of the Office relating to trademarks”.

2011—Subsec. (c). Pub. L. 112-29 designated existing provisions as par. (1), substituted “shall, subject to paragraph (3), be available” for “shall be available”, struck out at end “All fees available to the Director under section 31 of the Trademark Act of 1946 shall be used only for the processing of trademark registrations and for other activities, services, and materials relating to trademarks and to cover a proportionate share of the administrative costs of the Patent and Trademark Office.”, and added pars. (2) and (3).

2002—Subsecs. (a), (b). Pub. L. 107-273 made technical correction to directory language of Pub. L. 106-113, § 1000(a)(9) [title IV, § 4732(a)(10)(A)]. See 1999 Amendment note below.

1999—Subsecs. (a), (b). Pub. L. 106-113, § 1000(a)(9) [title IV, § 4732(a)(10)(A)], as amended by Pub. L. 107-273, substituted “Director” for “Commissioner”.

Subsec. (c). Pub. L. 106-113 substituted “Director” for “Commissioner” wherever appearing and, in second sentence, substituted “All fees available” for “Fees available” and “shall be used” for “may be used”.

Subsec. (d). Pub. L. 106-113, § 1000(a)(9) [title IV, § 4732(a)(10)(A)], substituted “Director” for “Commissioner”.

1998—Subsec. (c). Pub. L. 105-358 substituted first sentence for former first sentence which read as follows: “Revenues from fees shall be available to the Commissioner to carry out, to the extent provided in appropriation Acts, the activities of the Patent and Trademark Office.”

1991—Subsec. (c). Pub. L. 102-204, § 5(e), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “Revenues from fees will be available to the Commissioner of Patents to carry out, to the extent provided for in appropriation Acts, the activities of the Patent and Trademark Office. Fees available to the Commissioner under section 31 of the Trademark Act of 1946, as amended (15 U.S.C. 1113), shall be used exclusively for the processing of trademark registrations and for other services and materials related to trademarks.”

Subsec. (e). Pub. L. 102-204, § 4, added subsec. (e).

1982—Subsec. (b). Pub. L. 97-258 struck out “, the provisions of section 725e of title 31, United States Code, notwithstanding” after “United States”.

Subsec. (c). Pub. L. 97-247 inserted provision that fees available to the Commissioner under section 31 of the Trademark Act of 1946, as amended (15 U.S.C. 1113), be used exclusively for the processing of trademark registrations and for other services and materials related to trademarks.

1980—Pub. L. 96-517 designated existing provision relating to payment of patent fees as subsec. (a) and struck out provision that, except as provided in sections 361(b) and 376(b) of this title, the Commissioner deposit fees paid in the Treasury of the United States in such manner as directed by the Secretary of the Treasury, designated existing provision relating to return of excess amounts paid as subsec. (d), and added subsecs. (b) and (c).

1975—Pub. L. 94-131 inserted “, except as provided in sections 361(b) and 376(b) of this title,”.

#### EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112-274 effective Jan. 14, 2013, and applicable to proceedings commenced on or after such date, see section 1(n) of Pub. L. 112-274, set out as a note under section 5 of this title.

#### EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112-29, § 22(b), Sept. 16, 2011, 125 Stat. 336, provided that: “The amendments made by this section [amending this section] shall take effect on October 1, 2011.”

#### EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 1000(a)(9) [title IV, § 4732(a)(10)(A)] of 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 1998 AMENDMENT

Amendment by Pub. L. 105-358 effective Oct. 1, 1998, see section 5 of Pub. L. 105-358, set out as a note under section 41 of this title.

#### EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-247 effective Oct. 1, 1982, see section 17(a) of Pub. L. 97-247, set out as a note under section 41 of this title.

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-517 effective on first day of first fiscal year beginning on or after one calendar year after Dec. 12, 1980, subject to authorization of appropriation account credits from collected reexamination fees prior to the effective date, made available for payment of reexamination proceedings costs, see section

8(c) of Pub. L. 96-517, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-131 effective Jan. 24, 1978, and applicable on and after that date to patent applications filed in the United States and to international applications, where applicable, see section 11 of Pub. L. 94-131, set out as an Effective Date note under section 351 of this title.

AUTHORIZATION OF AMOUNTS AVAILABLE TO THE PATENT AND TRADEMARK OFFICE

Pub. L. 107-273, div. C, title III, §13102, Nov. 2, 2002, 116 Stat. 1899, provided that:

“(a) IN GENERAL.—There are authorized to be appropriated to the United States Patent and Trademark Office for salaries and necessary expenses for each of the fiscal years 2003 through 2008 an amount equal to the fees estimated by the Secretary of Commerce to be collected in each such fiscal year, respectively, under—

- “(1) title 35, United States Code; and
“(2) the Act entitled ‘An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes’, approved July 5, 1946 (15 U.S.C. 1051 et seq.) (commonly referred to as the Trademark Act of 1946).

“(b) ESTIMATES.—Not later than February 15, of each fiscal year, the Undersecretary of Commerce for Intellectual Property and the Director of the Patent and Trademark Office (in this subtitle [subtitle A (§§13101-13106) of title III of div. C of Pub. L. 107-273, amending sections 134, 141, 303, 312, and 315 of this title and enacting provisions set out as notes under sections 2, 134, and 303 of this title] referred to as the Director) shall submit an estimate of all fees referred to under subsection (a) to be collected in the next fiscal year to the chairman and ranking member of—

- “(1) the Committees on Appropriations and Judiciary of the Senate; and
“(2) the Committees on Appropriations and Judiciary of the House of Representatives.”

APPROPRIATIONS AUTHORIZED TO BE CARRIED OVER

Pub. L. 100-703, title I, §102, Nov. 19, 1988, 102 Stat. 4674, provided that: “Amounts appropriated under this Act and such fees as may be collected under title 35, United States Code, and the Trademark Act of 1946 (15 U.S.C. 1051 and following) may remain available until expended.”

Similar provisions were contained in the following prior authorization act:

Pub. L. 99-607, §2, Nov. 6, 1986, 100 Stat. 3470.

PART II—PATENTABILITY OF INVENTIONS AND GRANT OF PATENTS

Table with 2 columns: Chap. and Sec. listing sections 10 through 18 with their respective section numbers.

AMENDMENTS

2002—Pub. L. 107-273, div. C, title III, §13206(a)(6), Nov. 2, 2002, 116 Stat. 1904, substituted “Examination of Ap-

1 So in original. Does not conform to chapter heading.

plication” for “Examination of Applications” in heading of chapter 12.

1982—Pub. L. 97-256, title I, §101(6), Sept. 8, 1982, 96 Stat. 816, added item for chapter 18.

1975—Pub. L. 93-596, §1, Jan. 2, 1975, 88 Stat. 1949, substituted “Patent and Trademark Office” for “Patent Office” in heading of chapter 13.

CHAPTER 10—PATENTABILITY OF INVENTIONS

- Sec. 100. Definitions.
101. Inventions patentable.
102. Conditions for patentability; novelty.
103. Conditions for patentability; non-obvious subject matter.
[104. Repealed.]
105. Inventions in outer space.

AMENDMENTS

2011—Pub. L. 112-29, §3(b)(3), (d), Sept. 16, 2011, 125 Stat. 287, substituted in item 102 “Conditions for patentability; novelty” for “Conditions for patentability; novelty and loss of right to patent” and struck out item 104 “Invention made abroad”.

1990—Pub. L. 101-580, §1(b), Nov. 15, 1990, 104 Stat. 2863, added item 105.

§ 100. Definitions

When used in this title unless the context otherwise indicates—

(a) The term “invention” means invention or discovery.

(b) The term “process” means process, art or method, and includes a new use of a known process, machine, manufacture, composition of matter, or material.

(c) The terms “United States” and “this country” mean the United States of America, its territories and possessions.

(d) The word “patentee” includes not only the patentee to whom the patent was issued but also the successors in title to the patentee.

(e) The term “third-party requester” means a person requesting ex parte reexamination under section 302 who is not the patent owner.

(f) The term “inventor” means the individual or, if a joint invention, the individuals collectively who invented or discovered the subject matter of the invention.

(g) The terms “joint inventor” and “coinventor” mean any 1 of the individuals who invented or discovered the subject matter of a joint invention.

(h) The term “joint research agreement” means a written contract, grant, or cooperative agreement entered into by 2 or more persons or entities for the performance of experimental, developmental, or research work in the field of the claimed invention.

(i)(1) The term “effective filing date” for a claimed invention in a patent or application for patent means—

(A) if subparagraph (B) does not apply, the actual filing date of the patent or the application for the patent containing a claim to the invention; or

(B) the filing date of the earliest application for which the patent or application is entitled, as to such invention, to a right of priority under section 119, 365(a), or 365(b) or to the benefit of an earlier filing date under section 120, 121, or 365(c).