

(2) The effective filing date for a claimed invention in an application for reissue or reissued patent shall be determined by deeming the claim to the invention to have been contained in the patent for which reissue was sought.

(j) The term “claimed invention” means the subject matter defined by a claim in a patent or an application for a patent.

(July 19, 1952, ch. 950, 66 Stat. 797; Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4603], Nov. 29, 1999, 113 Stat. 1536, 1501A–567; Pub. L. 112–29, §3(a), Sept. 16, 2011, 125 Stat. 285; Pub. L. 112–211, title I, §102(1), Dec. 18, 2012, 126 Stat. 1531.)

AMENDMENT OF SUBSECTION (i)(1)(B)

Pub. L. 112–211, title I, §§102(1), 103, Dec. 18, 2012, 126 Stat. 1531, 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 and after that effective date and patents issuing thereon, with certain exceptions, subsection (i)(1)(B) of this section is amended by substituting “right of priority under section 119, 365(a), 365(b), 386(a), or 386(b) or to the benefit of an earlier filing date under section 120, 121, 365(c), or 386(c)” for “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)”. See 2012 Amendment note below.

HISTORICAL AND REVISION NOTES

Paragraph (a) is added only to avoid repetition of the phrase “invention or discovery” and its derivatives throughout the revised title. The present statutes use the phrase “invention or discovery” and derivatives.

Paragraph (b) is noted under section 101.

Paragraphs (c) and (d) are added to avoid the use of long expressions in various parts of the revised title.

AMENDMENTS

2012—Subsec. (i)(1)(B). Pub. L. 112–211 substituted “right of priority under section 119, 365(a), 365(b), 386(a), or 386(b) or to the benefit of an earlier filing date under section 120, 121, 365(c), or 386(c)” for “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)”.

2011—Subsec. (e). Pub. L. 112–29, §3(a)(1), struck out “or inter partes reexamination under section 311” after “302”.

Subsecs. (f) to (j). Pub. L. 112–29, §3(a)(2), added subsecs. (f) to (j).

1999—Subsec. (e). Pub. L. 106–113 added subsec. (e).

EFFECTIVE DATE OF 2012 AMENDMENT

Pub. L. 112–211, title I, §103, Dec. 18, 2012, 126 Stat. 1532, provided that:

“(a) IN GENERAL.—The amendments made by this title [enacting part V of this title and amending this section and sections 102, 111, 115, 120, 154, 173, 365, and 366 of this title] shall take effect on the later of—

“(1) the date that is 1 year after the date of the enactment of this Act [Dec. 18, 2012]; or

“(2) the date of entry into force of the treaty with respect to the United States.

“(b) APPLICABILITY OF AMENDMENTS.—

“(1) IN GENERAL.—Subject to paragraph (2), the amendments made by this title shall apply only to international design applications, international applications, and national applications filed on and after the effective date set forth in subsection (a), and patents issuing thereon.

“(2) EXCEPTION.—Sections 100(i) and 102(d) of title 35, United States Code, as amended by this title, shall not apply to an application, or any patent issuing thereon, unless it is described in section 3(n)(1) of the Leahy-Smith America Invents Act [Pub. L. 112–29] (35 U.S.C. 100 note).

“(c) DEFINITIONS.—For purposes of this section—

“(1) the terms ‘treaty’ and ‘international design application’ have the meanings given those terms in section 381 of title 35, United States Code, as added by this title;

“(2) the term ‘international application’ has the meaning given that term in section 351(c) of title 35, United States Code; and

“(3) the term ‘national application’ means ‘national application’ within the meaning of chapter 38 of title 35, United States Code, as added by this title.”

EFFECTIVE DATE OF 2011 AMENDMENT; SAVINGS PROVISIONS

Pub. L. 112–29, §3(n), Sept. 16, 2011, 125 Stat. 293, provided that:

“(1) IN GENERAL.—Except as otherwise provided in this section [amending this section and sections 32, 102, 103, 111, 119, 120, 134, 135, 145, 146, 154, 172, 202, 287, 291, 305, 363, 374, and 375 of this title, repealing sections 104 and 157 of this title, and enacting provisions set out as notes under sections 32, 102, and 111 of this title], the amendments made by this section shall take effect upon the expiration of the 18-month period beginning on the date of the enactment of this Act [Sept. 16, 2011], and shall apply to any application for patent, and to any patent issuing thereon, that contains or contained at any time—

“(A) a claim to a claimed invention that has an effective filing date as defined in section 100(i) of title 35, United States Code, that is on or after the effective date described in this paragraph; or

“(B) a specific reference under section 120, 121, or 365(c) of title 35, United States Code, to any patent or application that contains or contained at any time such a claim.

“(2) INTERFERING PATENTS.—The provisions of sections 102(g), 135, and 291 of title 35, United States Code, as in effect on the day before the effective date set forth in paragraph (1) of this subsection, shall apply to each claim of an application for patent, and any patent issued thereon, for which the amendments made by this section also apply, if such application or patent contains or contained at any time—

“(A) a claim to an invention having an effective filing date as defined in section 100(i) of title 35, United States Code, that occurs before the effective date set forth in paragraph (1) of this subsection; or

“(B) a specific reference under section 120, 121, or 365(c) of title 35, United States Code, to any patent or application that contains or contained at any time such a claim.”

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 effective Nov. 29, 1999, and applicable to any patent issuing from an original application filed in the United States on or after that date, see section 1000(a)(9) [title IV, §4608(a)] of Pub. L. 106–113, set out as a note under section 41 of this title.

§ 101. Inventions patentable

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

(July 19, 1952, ch. 950, 66 Stat. 797.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §31 (R.S. 4886, amended (1) Mar. 3, 1897, ch. 391, §1, 29 Stat. 692, (2) May

23, 1930, ch. 312, §1, 46 Stat. 376, (3) Aug. 5, 1939, ch. 450, §1, 53 Stat. 1212).

The corresponding section of existing statute is split into two sections, section 101 relating to the subject matter for which patents may be obtained, and section 102 defining statutory novelty and stating other conditions for patentability.

Section 101 follows the wording of the existing statute as to the subject matter for patents, except that reference to plant patents has been omitted for incorporation in section 301 and the word “art” has been replaced by “process”, which is defined in section 100. The word “art” in the corresponding section of the existing statute has a different meaning than the same word as used in other places in the statute; it has been interpreted by the courts as being practically synonymous with process or method. “Process” has been used as its meaning is more readily grasped than “art” as interpreted, and the definition in section 100(b) makes it clear that “process or method” is meant. The remainder of the definition clarifies the status of processes or methods which involve merely the new use of a known process, machine, manufacture, composition of matter, or material; they are processes or methods under the statute and may be patented provided the conditions for patentability are satisfied.

LIMITATION ON ISSUANCE OF PATENTS

Pub. L. 112-29, §33, Sept. 16, 2011, 125 Stat. 340, provided that:

“(a) LIMITATION.—Notwithstanding any other provision of law, no patent may issue on a claim directed to or encompassing a human organism.

“(b) EFFECTIVE DATE.—

“(1) IN GENERAL.—Subsection (a) shall apply to any application for patent that is pending on, or filed on or after, the date of the enactment of this Act [Sept. 16, 2011].

“(2) PRIOR APPLICATIONS.—Subsection (a) shall not affect the validity of any patent issued on an application to which paragraph (1) does not apply.”

§ 102. Conditions for patentability; novelty

(a) NOVELTY; PRIOR ART.—A person shall be entitled to a patent unless—

(1) the claimed invention was patented, described in a printed publication, or in public use, on sale, or otherwise available to the public before the effective filing date of the claimed invention; or

(2) the claimed invention was described in a patent issued under section 151, or in an application for patent published or deemed published under section 122(b), in which the patent or application, as the case may be, names another inventor and was effectively filed before the effective filing date of the claimed invention.

(b) EXCEPTIONS.—

(1) DISCLOSURES MADE 1 YEAR OR LESS BEFORE THE EFFECTIVE FILING DATE OF THE CLAIMED INVENTION.—A disclosure made 1 year or less before the effective filing date of a claimed invention shall not be prior art to the claimed invention under subsection (a)(1) if—

(A) the disclosure was made by the inventor or joint inventor or by another who obtained the subject matter disclosed directly or indirectly from the inventor or a joint inventor; or

(B) the subject matter disclosed had, before such disclosure, been publicly disclosed by the inventor or a joint inventor or another who obtained the subject matter disclosed directly or indirectly from the inventor or a joint inventor.

(2) DISCLOSURES APPEARING IN APPLICATIONS AND PATENTS.—A disclosure shall not be prior art to a claimed invention under subsection (a)(2) if—

(A) the subject matter disclosed was obtained directly or indirectly from the inventor or a joint inventor;

(B) the subject matter disclosed had, before such subject matter was effectively filed under subsection (a)(2), been publicly disclosed by the inventor or a joint inventor or another who obtained the subject matter disclosed directly or indirectly from the inventor or a joint inventor; or

(C) the subject matter disclosed and the claimed invention, not later than the effective filing date of the claimed invention, were owned by the same person or subject to an obligation of assignment to the same person.

(c) COMMON OWNERSHIP UNDER JOINT RESEARCH AGREEMENTS.—Subject matter disclosed and a claimed invention shall be deemed to have been owned by the same person or subject to an obligation of assignment to the same person in applying the provisions of subsection (b)(2)(C) if—

(1) the subject matter disclosed was developed and the claimed invention was made by, or on behalf of, 1 or more parties to a joint research agreement that was in effect on or before the effective filing date of the claimed invention;

(2) the claimed invention was made as a result of activities undertaken within the scope of the joint research agreement; and

(3) the application for patent for the claimed invention discloses or is amended to disclose the names of the parties to the joint research agreement.

(d) PATENTS AND PUBLISHED APPLICATIONS EFFECTIVE AS PRIOR ART.—For purposes of determining whether a patent or application for patent is prior art to a claimed invention under subsection (a)(2), such patent or application shall be considered to have been effectively filed, with respect to any subject matter described in the patent or application—

(1) if paragraph (2) does not apply, as of the actual filing date of the patent or the application for patent; or

(2) if the patent or application for patent is entitled to claim a right of priority under section 119, 365(a), or 365(b), or to claim the benefit of an earlier filing date under section 120, 121, or 365(c), based upon 1 or more prior filed applications for patent, as of the filing date of the earliest such application that describes the subject matter.

(July 19, 1952, ch. 950, 66 Stat. 797; Pub. L. 92-358, §2, July 28, 1972, 86 Stat. 502; Pub. L. 94-131, §5, Nov. 14, 1975, 89 Stat. 691; Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §§4505, 4806], Nov. 29, 1999, 113 Stat. 1536, 1501A-565, 1501A-590; Pub. L. 107-273, div. C, title III, §13205(1), Nov. 2, 2002, 116 Stat. 1902; Pub. L. 112-29, §3(b)(1), Sept. 16, 2011, 125 Stat. 285; Pub. L. 112-211, title I, §102(2), Dec. 18, 2012, 126 Stat. 1531.)

AMENDMENT OF SUBSECTION (d)(2)

Pub. L. 112-211, title I, §§102(2), 103, Dec. 18, 2012, 126 Stat. 1531, 1532, provided that, effec-