

vention was filed. Any such petition may be filed only within the 1-year period beginning on the date of the first publication of a claim to an invention that is the same or substantially the same as the earlier application's claim to the invention, shall be made under oath, and shall be supported by substantial evidence. Whenever the Director determines that a petition filed under this subsection demonstrates that the standards for instituting a derivation proceeding are met, the Director may institute a derivation proceeding. The determination by the Director whether to institute a derivation proceeding shall be final and nonappealable."

Subsec. (e). Pub. L. 112-274, §1(e)(1), substituted "correct inventor" for "correct inventors".

2011—Pub. L. 112-29, §3(i), amended section generally. Prior to amendment, section related to interferences.

Subsec. (b)(2). Pub. L. 112-29, §20(j), struck out "of this title" after "122(b)".

2002—Subsecs. (a), (c), (d). 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 notes below.

1999—Subsec. (a). Pub. L. 106-113, §1000(a)(9) [title IV, §4732(a)(10)(A)], as amended by Pub. L. 107-273, substituted "Director" for "Commissioner" wherever appearing.

Subsec. (b). Pub. L. 106-113, §1000(a)(9) [title IV, §4507(11)], designated existing provisions as par. (1) and added par. (2).

Subsecs. (c), (d). Pub. L. 106-113, §1000(a)(9) [title IV, §4732(a)(10)(A)], as amended by Pub. L. 107-273, substituted "Director" for "Commissioner" wherever appearing.

1984—Subsec. (a). Pub. L. 98-622, §202, amended subsec. (a) generally, substituting ", an interference may be declared and the Commissioner shall give notice of such declaration to the applicants, or applicant and patentee, as the case may be" for "he shall give notice thereof to the applicants, or applicant and patentee, as the case may be" and substituting provisions vesting jurisdiction for determining questions of interference in the Board of Patent Appeals and Interferences for provisions vesting such jurisdiction in a board of patent interferences.

Subsec. (d). Pub. L. 98-622, §105, added subsec. (d).

1975—Subsecs. (a), (c). Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office" wherever appearing.

1962—Pub. L. 87-831 designated first and second pars. as subsecs. (a) and (b) and added subsec. (c).

#### EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112-274, §1(e)(2), Jan. 14, 2013, 126 Stat. 2456, provided that: "The amendment made by paragraph (1) [amending this section] shall be effective as if included in the amendment made by section 3(i) of the Leahy-Smith America Invents Act [Pub. L. 112-29]."

Pub. L. 112-274, §1(k)(2), Jan. 14, 2013, 126 Stat. 2458, provided that: "The amendment made by paragraph (1) [amending this section] shall be effective as if included in the amendment made by section 3(i) of the Leahy-Smith America Invents Act [Pub. L. 112-29]."

#### EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by section 3(i) 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 1999 AMENDMENT

Amendment by section 1000(a)(9) [title IV, §4507(11)] of 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.

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 1984 AMENDMENT

Amendment by section 105 of Pub. L. 98-622 applicable to all United States patents granted before, on, or after Nov. 8, 1984, and to all applications for United States patents pending on or filed after that date, except as otherwise provided, see section 106 of Pub. L. 98-622, set out as a note under section 103 of this title.

Amendment by section 202 of Pub. L. 98-622 effective three months after Nov. 8, 1984, see section 207 of Pub. L. 98-622, set out as a note under section 41 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.

#### SAVINGS PROVISIONS

Pub. L. 112-274, §1(k)(3), Jan. 14, 2013, 126 Stat. 2458, provided that: "The provisions of sections 6 and 141 of title 35, United States Code, and section 1295(a)(4)(A) of title 28, United States Code, as in effect on September 15, 2012, shall apply to interference proceedings that are declared after September 15, 2012, under section 135 of title 35, United States Code, as in effect before the effective date under section 3(n) of the Leahy-Smith America Invents Act [Pub. L. 112-29, set out as a note under section 100 of this title]. The Patent Trial and Appeal Board may be deemed to be the Board of Patent Appeals and Interferences for purposes of such interference proceedings."

Provisions of 35 U.S.C. 135, as in effect on the day before the expiration of the 18-month period beginning on Sept. 16, 2011, apply to each claim of certain applications for patent, and certain patents issued thereon, for which the amendments made by section 3 of Pub. L. 112-29 also apply, see section 3(n)(2) of Pub. L. 112-29, set out as an Effective Date of 2011 Amendment; Savings Provisions note under section 100 of this title.

### CHAPTER 13—REVIEW OF PATENT AND TRADEMARK OFFICE DECISIONS

Sec.

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| 141. | Appeal to Court of Appeals for the Federal Circuit. |
| 142. | Notice of appeal.                                   |
| 143. | Proceedings on appeal.                              |
| 144. | Decision on appeal.                                 |
| 145. | Civil action to obtain patent.                      |
| 146. | Civil action in case of derivation proceeding.      |

#### AMENDMENTS

2011—Pub. L. 112-29, §3(j)(6), Sept. 16, 2011, 125 Stat. 291, amended item 146 generally, substituting "Civil action in case of derivation proceeding" for "Civil action in case of interference".

1982—Pub. L. 97-164, title I, §163(b)(1), Apr. 2, 1982, 96 Stat. 49, substituted "Court of Appeals for the Federal Circuit" for "Court of Customs and Patent Appeals" in item 141.

1975—Pub. L. 93-596, §1, Jan. 2, 1975, 88 Stat. 1949, substituted "PATENT AND TRADEMARK OFFICE" for "PATENT OFFICE" in chapter heading.

#### § 141. Appeal to Court of Appeals for the Federal Circuit

(a) EXAMINATIONS.—An applicant who is dissatisfied with the final decision in an appeal to the