

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 49 (R.S. 4900, amended Feb. 7, 1927, ch. 67, 44 Stat. 1058).

Language is changed. The proviso in the corresponding section of existing statute is omitted as being temporary in character and now obsolete.

REFERENCES IN TEXT

Section 9006 of the Process Patent Amendments Act of 1988, referred to in subsec. (b)(1), is section 9006 of title IX of Pub. L. 100-418, which is set out as a note under section 271 of this title.

The effective date of the Process Patent Amendments Act of 1988, referred to in subsec. (b)(4)(C), is the effective date of title IX of Pub. L. 100-418. See section 9006 of Pub. L. 100-418, set out as a note under section 271 of this title.

Section 501(c) of the Internal Revenue Code, referred to in subsec. (c)(3), is classified to section 501(c) of Title 26, Internal Revenue Code.

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (c)(3)(B), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§ 301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

The Public Health Service Act, referred to in subsec. (c)(3)(B), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended, which is classified generally to chapter 6A (§ 201 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

The Clinical Laboratories Improvement Act, referred to in subsec. (c)(3)(B), probably means the Clinical Laboratories Improvement Act of 1967, section 5 of Pub. L. 90-174, Dec. 5, 1967, 81 Stat. 536, which enacted section 263a of Title 42 and enacted provisions set out as notes under section 263a of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 263a of Title 42 and Tables.

AMENDMENTS

2011—Subsec. (a). Pub. L. 112-29, § 16(a)(1), substituted “or by fixing thereon the word ‘patent’ or the abbreviation ‘pat.’ together with an address of a posting on the Internet, accessible to the public without charge for accessing the address, that associates the patented article with the number of the patent, or when,” for “or when.”

Subsec. (b)(2). Pub. L. 112-29, § 20(j), struck out “of this title” after “271(g)”.

Subsec. (c)(1). Pub. L. 112-29, § 20(j), struck out “of this title” after “271(a) or (b)” and after “285”.

Subsec. (c)(2)(G). Pub. L. 112-29, § 20(i)(4), substituted “any State” for “any state”.

Subsec. (c)(4). Pub. L. 112-29, § 3(g)(2), substituted “which has an effective filing date before” for “the earliest effective filing date of which is prior to”.

1999—Subsec. (c)(4). Pub. L. 106-113 substituted “based on an application the earliest effective filing date of which is prior to September 30, 1996” for “before the date of enactment of this subsection”.

1996—Subsec. (c). Pub. L. 104-208 added subsec. (c).

1994—Subsec. (a). Pub. L. 103-465, § 533(b)(5)(A), substituted “making, offering for sale, or selling within the United States” for “making or selling” and inserted “or importing any patented article into the United States,” after “under them.”

Subsec. (b)(1)(C). Pub. L. 103-465, § 533(b)(5)(B)(i), substituted “use, offer for sale, or sale” for “use, or sale”.

Subsec. (b)(4)(A). Pub. L. 103-465, § 533(b)(5)(B)(ii), substituted “sold, offered for sale, or” for “sold or” in introductory provisions.

Subsec. (b)(4)(A)(ii). Pub. L. 103-465, § 533(b)(5)(B)(iii), substituted “use, offer for sale, or sale” for “use, or sale”.

Subsec. (b)(4)(C). Pub. L. 103-465, § 533(b)(5)(B)(iv), (v), substituted “have been offered for sale or sold” for

“have been sold” and “United States, or imported by the person into the United States, before” for “United States before”.

1988—Pub. L. 100-418 inserted “and other remedies” in section catchline, designated existing provisions as subsec. (a), and added subsec. (b).

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by section 3(g)(2) 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.

Pub. L. 112-29, § 16(a)(2), Sept. 16, 2011, 125 Stat. 328, provided that: “The amendment made by this subsection [amending this section] shall apply to any case that is pending on, or commenced on or after, the date of the enactment of this Act [Sept. 16, 2011].”

Amendment by section 20(i)(4), (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 1994 AMENDMENT

Amendment by Pub. L. 103-465 effective on date that is one year after date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], with provisions relating to earliest filed patent application, see section 534(a), (b)(3) of Pub. L. 103-465, set out as a note under section 154 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-418 effective 6 months after Aug. 23, 1988, and, subject to enumerated exceptions, applicable only with respect to products made or imported after such effective date, see section 9006 of Pub. L. 100-418, set out as a note under section 271 of this title.

§ 288. Action for infringement of a patent containing an invalid claim

Whenever a claim of a patent is invalid, an action may be maintained for the infringement of a claim of the patent which may be valid. The patentee shall recover no costs unless a disclaimer of the invalid claim has been entered at the Patent and Trademark Office before the commencement of the suit.

(July 19, 1952, ch. 950, 66 Stat. 813; Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 112-29, § 20(h), Sept. 16, 2011, 125 Stat. 334.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 71 (R.S. 4922).

The necessity for a disclaimer to recover on valid claims is eliminated. See section 253.

Language is changed.

AMENDMENTS

2011—Pub. L. 112-29 struck out “, without deceptive intention,” after “Whenever”.

1975—Pub. L. 93-596 substituted “Patent and Trademark Office” for “Patent Office”.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by 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 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.

§ 289. Additional remedy for infringement of design patent

Whoever during the term of a patent for a design, without license of the owner, (1) applies the patented design, or any colorable imitation thereof, to any article of manufacture for the purpose of sale, or (2) sells or exposes for sale any article of manufacture to which such design or colorable imitation has been applied shall be liable to the owner to the extent of his total profit, but not less than \$250, recoverable in any United States district court having jurisdiction of the parties.

Nothing in this section shall prevent, lessen, or impeach any other remedy which an owner of an infringing patent has under the provisions of this title, but he shall not twice recover the profit made from the infringement.

(July 19, 1952, ch. 950, 66 Stat. 813.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §§74, 75 (Feb. 4, 1887, ch. 105, §§1, 2, 24 Stat. 387, 388).

Language is changed.

§ 290. Notice of patent suits

The clerks of the courts of the United States, within one month after the filing of an action under this title shall give notice thereof in writing to the Director, setting forth so far as known the names and addresses of the parties, name of the inventor, and the designating number of the patent upon which the action has been brought. If any other patent is subsequently included in the action he shall give like notice thereof. Within one month after the decision is rendered or a judgment issued the clerk of the court shall give notice thereof to the Director. The Director shall, on receipt of such notices, enter the same in the file of such patent.

(July 19, 1952, ch. 950, 66 Stat. 814; 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.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §70, part (R.S. 4921, amended (1) Mar. 3, 1897, ch. 391, §6, 29 Stat. 694, (2) Feb. 18, 1922, ch. 58, §8, 42 Stat. 392, (3) Aug. 1, 1946, ch. 726, §1, 60 Stat. 778).

This is the last sentence of R.S. 4921, third paragraph, with minor changes in language.

AMENDMENTS

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

1999—Pub. L. 106-113, as amended by Pub. L. 107-273, substituted “Director” for “Commissioner” wherever appearing.

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.

§ 291. Derived patents

(a) IN GENERAL.—The owner of a patent may have relief by civil action against the owner of

another patent that claims the same invention and has an earlier effective filing date, if the invention claimed in such other patent was derived from the inventor of the invention claimed in the patent owned by the person seeking relief under this section.

(b) FILING LIMITATION.—An action under this section may be filed only before the end of the 1-year period beginning on the date of the issuance of the first patent containing a claim to the allegedly derived invention and naming an individual alleged to have derived such invention as the inventor or joint inventor.

(July 19, 1952, ch. 950, 66 Stat. 814; Pub. L. 112-29, §§3(h)(1), 20(j), Sept. 16, 2011, 125 Stat. 288, 335.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §66 (R.S. 4918, amended Mar. 2, 1927, ch. 273, §12, 44 Stat. 1337).

Language is changed.

AMENDMENTS

2011—Pub. L. 112-29, §20(j), struck out “of this title” after “146”.

Pub. L. 112-29, §3(h)(1), amended section generally. Prior to amendment, text read as follows: “The owner of an interfering patent may have relief against the owner of another by civil action, and the court may adjudicate the question of the validity of any of the interfering patents, in whole or in part. The provisions of the second paragraph of section 146 shall apply to actions brought under this section.”

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by section 3(h)(1) 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.

SAVINGS PROVISIONS

Provisions of 35 U.S.C. 291, 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.

§ 292. False marking

(a) Whoever, without the consent of the patentee, marks upon, or affixes to, or uses in advertising in connection with anything made, used, offered for sale, or sold by such person within the United States, or imported by the person into the United States, the name or any imitation of the name of the patentee, the patent number, or the words “patent,” “patentee,” or the like, with the intent of counterfeiting or imitating the mark of the patentee, or of deceiving the public and inducing them to believe that the thing was made, offered for sale, sold, or imported into the United States by or with the consent of the patentee; or

Whoever marks upon, or affixes to, or uses in advertising in connection with any unpatented