

§ 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