

1999, 113 Stat. 1536, 1501A-582; Pub. L. 107-273, div. C, title III, §13206(b)(1)(B), Nov. 2, 2002, 116 Stat. 1906.)

AMENDMENTS

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

1999—Subsec. (b). Pub. L. 106-113, as amended by Pub. L. 107-273, substituted “Director” for “Commissioner”.

1986—Pub. L. 99-616 inserted “and International Preliminary Examining Authority” in section catchline and amended text generally. Prior to amendment, text read as follows: “The Patent and Trademark Office may act as an International Searching Authority with respect to international applications in accordance with the terms and conditions of an agreement which may be concluded with the International Bureau.”

1984—Pub. L. 98-622 substituted “Patent and Trademark Office” for “Patent Office”.

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.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-616 effective July 1, 1987, and applicable to all international applications pending before or after that date, see section 9 of Pub. L. 99-616, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-622 effective Nov. 8, 1984, see section 406(a) of Pub. L. 98-622, set out as a note under section 351 of this title.

§ 363. International application designating the United States: Effect

An international application designating the United States shall have the effect, from its international filing date under article 11 of the treaty, of a national application for patent regularly filed in the Patent and Trademark Office.

(Added Pub. L. 94-131, §1, Nov. 14, 1975, 89 Stat. 686; amended Pub. L. 98-622, title IV, §403(a), Nov. 8, 1984, 98 Stat. 3392; Pub. L. 112-29, §§3(g)(3), 20(j), Sept. 16, 2011, 125 Stat. 288, 335.)

AMENDMENTS

2011—Pub. L. 112-29, §20(j), struck out “of this title” after “102(e)”.

Pub. L. 112-29, §3(g)(3), which directed the striking out of “except as otherwise provided in section 102(e) of this title”, was executed by striking out “except as otherwise provided in section 102(e)” before period at end, to reflect the probable intent of Congress, because the words “of this title” did not appear subsequent to amendment by Pub. L. 112-29, §20(j). See note above and Effective Date of 2011 Amendment notes below.

1984—Pub. L. 98-622 substituted “Patent and Trademark Office” for “Patent Office”.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by section 3(g)(3) 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 1984 AMENDMENT

Amendment by Pub. L. 98-622 effective Nov. 8, 1984, see section 406(a) of Pub. L. 98-622, set out as a note under section 351 of this title.

§ 364. International stage: Procedure

(a) International applications shall be processed by the Patent and Trademark Office when acting as a Receiving Office, International Searching Authority, or International Preliminary Examining Authority, in accordance with the applicable provisions of the treaty, the Regulations, and this title.

(b) An applicant’s failure to act within prescribed time limits in connection with requirements pertaining to an international application may be excused as provided in the treaty and the Regulations.

(Added Pub. L. 94-131, §1, Nov. 14, 1975, 89 Stat. 686; amended Pub. L. 98-622, title IV, §403(a), Nov. 8, 1984, 98 Stat. 3392; Pub. L. 99-616, §5, Nov. 6, 1986, 100 Stat. 3485; 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; Pub. L. 112-211, title II, §202(b)(8), Dec. 18, 2012, 126 Stat. 1536.)

AMENDMENTS

2012—Subsec. (b). Pub. L. 112-211 added subsec. (b) and struck out former subsec. (b) which read as follows: “An applicant’s failure to act within prescribed time limits in connection with requirements pertaining to a pending international application may be excused upon a showing satisfactory to the Director of unavoidable delay, to the extent not precluded by the treaty and the Regulations, and provided the conditions imposed by the treaty and the Regulations regarding the excuse of such failure to act are complied with.”

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

1999—Subsec. (b). Pub. L. 106-113, as amended by Pub. L. 107-273, substituted “Director” for “Commissioner”.

1986—Subsec. (a). Pub. L. 99-616 substituted a comma for “or” before “International Searching Authority” and “International Preliminary Examining Authority” for “both”.

1984—Subsec. (a). Pub. L. 98-622 substituted “Patent and Trademark Office” for “Patent Office”.

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112-211 effective on the date that is 1 year after Dec. 18, 2012, applicable to patents issued before, on, or after that effective date and patent applications pending on or filed after that effective date, and not effective with respect to patents in litigation commenced before that effective date, see section 203 of Pub. L. 112-211, set out as an Effective Date note under section 27 of this title.

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.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-616 effective July 1, 1987, and applicable to all international applications pending before or after that date, see section 9 of Pub. L. 99-616, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-622 effective Nov. 8, 1984, see section 406(a) of Pub. L. 98-622, set out as a note under section 351 of this title.

§ 365. Right of priority; benefit of the filing date of a prior application

(a) In accordance with the conditions and requirements of subsections (a) through (d) of section 119, a national application shall be entitled to the right of priority based on a prior filed international application which designated at least one country other than the United States.

(b) In accordance with the conditions and requirement of section 119(a) and the treaty and the Regulations, an international application designating the United States shall be entitled to the right of priority based on a prior foreign application, or a prior international application designating at least one country other than the United States. The Director may establish procedures, including the requirement for payment of the fee specified in section 41(a)(7), to accept an unintentionally delayed claim for priority under the treaty and the Regulations, and to accept a priority claim that pertains to an application that was not filed within the priority period specified in the treaty and Regulations, but was filed within the additional 2-month period specified under section 119(a) or the treaty and Regulations.

(c) In accordance with the conditions and requirements of section 120, an international application designating the United States shall be entitled to the benefit of the filing date of a prior national application or a prior international application designating the United States, and a national application shall be entitled to the benefit of the filing date of a prior international application designating the United States. If any claim for the benefit of an earlier filing date is based on a prior international application which designated but did not originate in the United States, the Director may require the filing in the Patent and Trademark Office of a certified copy of such application together with a translation thereof into the English language, if it was filed in another language.

(Added Pub. L. 94-131, § 1, Nov. 14, 1975, 89 Stat. 686; amended Pub. L. 98-622, title IV, § 403(a), Nov. 8, 1984, 98 Stat. 3392; Pub. L. 103-465, title V, § 532(c)(4), Dec. 8, 1994, 108 Stat. 4987; 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; Pub. L. 112-29, § 20(j), Sept. 16, 2011, 125 Stat. 335; Pub. L. 112-211, title I, § 102(8), title II, § 201(c)(2), Dec. 18, 2012, 126 Stat. 1532, 1535.)

AMENDMENT OF SUBSECTION (c)

Pub. L. 112-211, title I, §§ 102(8), 103, Dec. 18, 2012, 126 Stat. 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, subsection (c) of this section is amended, in the first sentence, by substituting “; a prior international application designating the United States, or a prior international design application as defined in section 381(a)(6) des-

ignating the United States” for “or a prior international application designating the United States” and, in the second sentence, by inserting “or a prior international design application as defined in section 381(a)(6) which designated but did not originate in the United States” after “did not originate in the United States”. See 2012 Amendment note below.

AMENDMENTS

2012—Subsec. (b). Pub. L. 112-211, § 201(c)(2), inserted at end “The Director may establish procedures, including the requirement for payment of the fee specified in section 41(a)(7), to accept an unintentionally delayed claim for priority under the treaty and the Regulations, and to accept a priority claim that pertains to an application that was not filed within the priority period specified in the treaty and Regulations, but was filed within the additional 2-month period specified under section 119(a) or the treaty and Regulations.”

Subsec. (c). Pub. L. 112-211, § 102(8), substituted “; a prior international application designating the United States, or a prior international design application as defined in section 381(a)(6) designating the United States” for “or a prior international application designating the United States” and inserted “or a prior international design application as defined in section 381(a)(6) which designated but did not originate in the United States” after “did not originate in the United States”.

2011—Subsec. (a). Pub. L. 112-29 struck out “of this title” after “119”.

Subsec. (b). Pub. L. 112-29 struck out “of this title” after “119(a)”.

Subsec. (c). Pub. L. 112-29 struck out “of this title” after “120”.

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

1999—Subsec. (c). Pub. L. 106-113, as amended by Pub. L. 107-273, substituted “Director” for “Commissioner”.

1994—Subsec. (a). Pub. L. 103-465, § 532(c)(4)(A), substituted “subsections (a) through (d) of section 119” for “section 119”.

Subsec. (b). Pub. L. 103-465, § 532(c)(4)(B), substituted “section 119(a)” for “the first paragraph of section 119”.

1984—Subsec. (c). Pub. L. 98-622 substituted “Patent and Trademark Office” for “Patent Office”.

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by section 102(8) of Pub. L. 112-211 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, see section 103 of Pub. L. 112-211, set out as a note under section 100 of this title.

Amendment by section 201(c)(2) of Pub. L. 112-211 effective on the date that is 1 year after Dec. 18, 2012, applicable to patents issued before, on, or after that effective date and patent applications pending on or filed after that effective date, and not effective with respect to patents in litigation commenced before that effective date, see section 203 of Pub. L. 112-211, set out as an Effective Date note under section 27 of this title.

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 1999 AMENDMENT

Amendment by Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, § 4731]