

§ 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]

of Pub. L. 106-113, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-465 effective 6 months after Dec. 8, 1994, and applicable to all patent applications filed in the United States on or after that effective date, with provisions relating to earliest filed patent application, see section 534(b)(1), (3) of Pub. L. 103-465, set out as a note under section 154 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.

§ 366. Withdrawn international application

Subject to section 367 of this part, if an international application designating the United States is withdrawn or considered withdrawn, either generally or as to the United States, under the conditions of the treaty and the Regulations, before the applicant has complied with the applicable requirements prescribed by section 371(c) of this part, the designation of the United States shall have no effect after the date of withdrawal, and shall be considered as not having been made, unless a claim for the benefit of a prior filing date under section 365(c) of this part was made in a national application, or an international application designating the United States, filed before the date of such withdrawal. However, such withdrawn international application may serve as the basis for a claim of priority under section 365(a) and (b) of this part, if it designated a country other than the United States.

(Added Pub. L. 94-131, §1, Nov. 14, 1975, 89 Stat. 687; amended Pub. L. 98-622, title IV, §401(b), Nov. 8, 1984, 98 Stat. 3391; Pub. L. 112-211, title I, §102(9), Dec. 18, 2012, 126 Stat. 1532.)

AMENDMENT OF SECTION

Pub. L. 112-211, title I, §§102(9), 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, this section is amended, in the first sentence, by striking “unless a claim” and all that follows through “withdrawal.” and inserting “unless a claim for benefit of a prior filing date under section 365(c) of this section was made in a national application, or an international application designating the United States, or a claim for benefit under section 386(c) was made in an international design application designating the United States, filed before the date of such withdrawal.” and by striking the second sentence and inserting “However, such withdrawn international application may serve as the basis for a claim of priority under section 365(a) and (b), or under section 386(a) or (b), if it designated a country other than the United States.” See 2012 Amendment note below.

AMENDMENTS

2012—Pub. L. 112-211 substituted “unless a claim for benefit of a prior filing date under section 365(c) of this

section was made in a national application, or an international application designating the United States, or a claim for benefit under section 386(c) was made in an international design application designating the United States, filed before the date of such withdrawal.” for “unless a claim for the benefit of a prior filing date under section 365(c) of this part was made in a national application, or an international application designating the United States, filed before the date of such withdrawal.” and “However, such withdrawn international application may serve as the basis for a claim of priority under section 365(a) and (b), or under section 386(a) or (b), if it designated a country other than the United States.” for “However, such withdrawn international application may serve as the basis for a claim of priority under section 365(a) and (b) of this part, if it designated a country other than the United States.”

1984—Pub. L. 98-622 inserted “after the date of withdrawal,” after “effect” and “, unless a claim for the benefit of a prior filing date under section 365(c) of this part was made in a national application, or an international application designating the United States, filed before the date of such withdrawal” after “having been made” in first sentence, and inserted “withdrawn” after “such” in second sentence.

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by 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.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-622 effective six months after Nov. 8, 1984, see section 406(b) of Pub. L. 98-622, set out as a note under section 3 of this title.

§ 367. Actions of other authorities: Review

(a) Where a Receiving Office other than the Patent and Trademark Office has refused to accord an international filing date to an international application designating the United States or where it has held such application to be withdrawn either generally or as to the United States, the applicant may request review of the matter by the Director, on compliance with the requirements of and within the time limits specified by the treaty and the Regulations. Such review may result in a determination that such application be considered as pending in the national stage.

(b) The review under subsection (a) of this section, subject to the same requirements and conditions, may also be requested in those instances where an international application designating the United States is considered withdrawn due to a finding by the International Bureau under article 12(3) of the treaty.

(Added Pub. L. 94-131, §1, Nov. 14, 1975, 89 Stat. 687; amended Pub. L. 98-622, title IV, §403(a), Nov. 8, 1984, 98 Stat. 3392; 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.)

AMENDMENTS

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