

**§ 2182. Inventions conceived during Commission contracts; ownership; waiver; hearings**

Any invention or discovery, useful in the production or utilization of special nuclear material or atomic energy, made or conceived in the course of or under any contract, subcontract, or arrangement entered into with or for the benefit of the Commission, regardless of whether the contract, subcontract, or arrangement involved the expenditure of funds by the Commission, shall be vested in, and be the property of, the Commission, except that the Commission may waive its claim to any such invention or discovery under such circumstances as the Commission may deem appropriate, consistent with the policy of this section. No patent for any invention or discovery, useful in the production or utilization of special nuclear material or atomic energy, shall be issued unless the applicant files with the application, or within thirty days after request therefor by the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (unless the Commission advises the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office that its rights have been determined and that accordingly no statement is necessary) a statement under oath setting forth the full facts surrounding the making or conception of the invention or discovery described in the application and whether the invention or discovery was made or conceived in the course of or under any contract, subcontract, or arrangement entered into with or for the benefit of the Commission, regardless of whether the contract, subcontract, or arrangement involved the expenditure of funds by the Commission. The Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office shall as soon as the application is otherwise in condition for allowance forward copies of the application and the statement to the Commission.

The Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office may proceed with the application and issue the patent to the applicant (if the invention or discovery is otherwise patentable) unless the Commission, within 90 days after receipt of copies of the application and statement, directs the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office to issue the patent to the Commission (if the invention or discovery is otherwise patentable) to be held by the Commission as the agent of and on behalf of the United States.

If the Commission files such a direction with the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, and if the applicant's statement claims, and the applicant still believes, that the invention or discovery was not made or conceived in the course of or under any contract, subcontract or arrangement entered into with or for the benefit of the Commission entitling the Commission to the title to the application or the patent the applicant may, with-

in 30 days after notification of the filing of such a direction, request a hearing before the Patent Trial and Appeal Board. The Board shall have the power to hear and determine whether the Commission was entitled to the direction filed with the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office. The Board shall follow the rules and procedures established for interference and derivation cases and an appeal may be taken by either the applicant or the Commission from the final order of the Board to the United States Court of Appeals for the Federal Circuit in accordance with the procedures governing the appeals from the Patent Trial and Appeal Board.

If the statement filed by the applicant should thereafter be found to contain false material statements any notification by the Commission that it has no objections to the issuance of a patent to the applicant shall not be deemed in any respect to constitute a waiver of the provisions of this section or of any applicable civil or criminal statute, and the Commission may have the title to the patent transferred to the Commission on the records of the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office in accordance with the provisions of this section. A determination of rights by the Commission pursuant to a contractual provision or other arrangement prior to the request of the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office for the statement, shall be final in the absence of false material statements or nondisclosure of material facts by the applicant.

(Aug. 1, 1946, ch. 724, title I, § 152, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 944; amended Pub. L. 87-206, § 10, Sept. 6, 1961, 75 Stat. 477; Pub. L. 87-615, § 11, Aug. 29, 1962, 76 Stat. 411; Pub. L. 97-164, title I, § 162(2), Apr. 2, 1982, 96 Stat. 49; Pub. L. 98-622, title II, § 205(b), Nov. 8, 1984, 98 Stat. 3388; renumbered title I, Pub. L. 102-486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, § 4732(b)(19)], Nov. 29, 1999, 113 Stat. 1536, 1501A-585; Pub. L. 112-29, § 7(d)(1), Sept. 16, 2011, 125 Stat. 315.)

AMENDMENTS

2011—Pub. L. 112-29 substituted “Patent Trial and Appeal Board” for “Board of Patent Appeals and Interferences” in two places and inserted “and derivation” after “established for interference”.

1999—Pub. L. 106-113 substituted “Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office” for “Commissioner of Patents” wherever appearing.

1984—Pub. L. 98-622, in third par., substituted “the Board of Patent Appeals and Interferences” for “a Board of Patent Interferences” and “the Board of Patent Interferences”.

1982—Pub. L. 97-164 substituted “United States Court of Appeals for the Federal Circuit” for “Court of Customs and Patent Appeals” in third par.

1962—Pub. L. 87-615 substituted “allowance” for “allowances” before “forward copies of the application” in first par.

1961—Pub. L. 87-206 clarified language concerning Commission's patent rights on inventions made or conceived under contract, subcontract, or arrangement

with Commission, striking out language extending Commission's patent rights to other relationships and activities in connection with Commission contracts, provided for waiver of patent rights consistent with the policy of this section and for finality of determinations of Commission, and dispensed with need for statement to Commissioner of Patents under certain circumstances.

**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, with certain exceptions, see section 7(e) of Pub. L. 112-29, set out as a note under section 6 of Title 35, Patents.

**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 Title 35, Patents.

**EFFECTIVE DATE OF 1984 AMENDMENT**

Amendment by 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 Title 35, Patents.

**EFFECTIVE DATE OF 1982 AMENDMENT**

Amendment by Pub. L. 97-164 effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

**§ 2183. Nonmilitary utilization**

**(a) Declaration of public interest**

The Commission may, after giving the patent owner an opportunity for a hearing, declare any patent to be affected with the public interest if (1) the invention or discovery covered by the patent is of primary importance in the production or utilization of special nuclear material or atomic energy; and (2) the licensing of such invention or discovery under this section is of primary importance to effectuate the policies and purposes of this chapter.

**(b) Action by Commission**

Whenever any patent has been declared affected with the public interest, pursuant to subsection (a) of this section—

(1) the Commission is licensed to use the invention or discovery covered by such patent in performing any of its powers under this chapter; and

(2) any person may apply to the Commission for a nonexclusive patent license to use the invention or discovery covered by such patent, and the Commission shall grant such patent license to the extent that it finds that the use of the invention or discovery is of primary importance to the conduct of an activity by such person authorized under this chapter.

**(c) Application for patent**

Any person—

(1) who has made application to the Commission for a license under sections 2073, 2092, 2093, 2111, 2133 or 2134 of this title, or a permit or lease under section 2097 of this title;

(2) to whom such license, permit, or lease has been issued by the Commission;

(3) who is authorized to conduct such activities as such applicant is conducting or pro-

poses to conduct under a general license issued by the Commission under sections 2092 or 2111 of this title; or

(4) whose activities or proposed activities are authorized under section 2051 of this title,

may at any time make application to the Commission for a patent license for the use of an invention or discovery useful in the production or utilization of special nuclear material or atomic energy covered by a patent. Each such application shall set forth the nature and purpose of the use which the applicant intends to make of the patent license, the steps taken by the applicant to obtain a patent license from the owner of the patent, and a statement of the effects, as estimated by the applicant, on the authorized activities which will result from failure to obtain such patent license and which will result from the granting of such patent license.

**(d) Hearings**

Whenever any person has made an application to the Commission for a patent license pursuant to subsection (c) of this section—

(1) the Commission, within 30 days after the filing of such application, shall make available to the owner of the patent all of the information contained in such application, and shall notify the owner of the patent of the time and place at which a hearing will be held by the Commission;

(2) the Commission shall hold a hearing within 60 days after the filing of such application at a time and place designated by the Commission; and

(3) in the event an applicant applies for two or more patent licenses, the Commission may, in its discretion, order the consolidation of such applications, and if the patents are owned by more than one owner, such owners may be made parties to one hearing.

**(e) Commission's findings**

If, after any hearing conducted pursuant to subsection (d) of this section, the Commission finds that—

(1) the invention or discovery covered by the patent is of primary importance in the production or utilization of special nuclear material or atomic energy;

(2) the licensing of such invention or discovery is of primary importance to the conduct of the activities of the applicant;

(3) the activities to which the patent license are proposed to be applied by such applicant are of primary importance to the furtherance of policies and purposes of this chapter; and

(4) such applicant cannot otherwise obtain a patent license from the owner of the patent on terms which the Commission deems to be reasonable for the intended use of the patent to be made by such applicant,

the Commission shall license the applicant to use the invention or discovery covered by the patent for the purposes stated in such application on terms deemed equitable by the Commission and generally not less fair than those granted by the patentee or by the Commission to similar licensees for comparable use.

**(f) Limitations on issuance of patent**

The Commission shall not grant any patent license pursuant to subsection (e) of this section