

977; Feb. 27, 1921, ch. 76, 41 Stat. 1147; Dec. 21, 1921, ch. 13, 42 Stat. 351; Dec. 27, 1922, ch. 13, 42 Stat. 1065; Mar. 4, 1923, ch. 285, §1, 42 Stat. 1511; May 7, 1926, ch. 252, 44 Stat. 406; Mar. 10, 1928, ch. 167, §§11–14, 20, 45 Stat. 270–273, 277; June 25, 1936, ch. 804, 49 Stat. 1921; Aug. 24, 1937, ch. 745, 50 Stat. 748; June 25, 1948, ch. 646, §32(a), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Aug. 6, 1956, ch. 1016, §3, 70 Stat. 1073; Pub. L. 87–846, title II, §203, Oct. 22, 1962, 76 Stat. 1113.)

AMENDMENTS

1962—Subsec. (a). Pub. L. 87–846 inserted provisions for sale of claimed property in time of war or during national emergency, publication of notice in Federal Register of intention to sell, deposit of net proceeds of sale in a special account in the Treasury, satisfaction of the claim from such net proceeds, election to waive claims to net proceeds and to claim just compensation, judicial determination of amount of compensation, order for payment, judgment against United States and notification of Secretary of the Treasury respecting the determination of election made.

1956—Subsec. (b)(15). Act Aug. 6, 1956, repealed par. (15) which related to property of the Austro-Hungarian Bank.

1937—Subsec. (e). Act Aug. 24, 1937, inserted proviso that arrangements by foreign nations certified by Secretary of State would be regarded as meeting reciprocity requirement for return of property.

1928—Subsec. (b)(12) to (22). Act Mar. 10, 1928, §11, added pars. (12) to (22).

Subsec. (d). Act Mar. 10, 1928, §12(a), amended subsec. (d) generally.

Subsec. (e). Act Mar. 10, 1928, §12(b), inserted “; nor shall a debt be allowed under this section unless notice of the claim has been filed, or application therefor has been made, prior to the date of the enactment of the Settlement of War Claims Act of 1928” before period at end.

Subsec. (g). Act Mar. 10, 1928, §12(c), amended subsec. (g) generally.

Subsecs. (l) to (q). Act Mar. 10, 1928, §§13, 14, added subsecs. (l) to (q).

1926—Subsec. (b)(3A), (3B). Act May 7, 1926, added pars. (3A) and (3B).

1923—Act Mar. 4, 1923, added pars. (9) to (11) of subsec. (b), and subsecs. (g) to (j) and redesignated former subsec. (g) as (k).

1922—Subsec. (a). Act Dec. 27, 1922, increased time limit for instituting a suit from eighteen to thirty months.

1921—Subsec. (a). Act Dec. 21, 1921, increased time limit for instituting a suit from six to eighteen months.

Subsec. (b). Act Feb. 27, 1921, added to pars. (2) and (3) requirement that money or property be acquired subsequent to Jan. 1, 1917, and struck out in par. (3) requirement that citizenship be by birth in the United States.

1920—Act June 5, 1920, added pars. (1) to (8) of subsec. (b) and added subsecs. (c) to (g), latter two subsecs. having formerly been last two paragraphs, respectively, of subsec. (b).

1919—Act July 11, 1919, struck out requirement of owner's assent to the transfer of property to the Custodian, gave the Supreme Court of the District of Columbia co-extensive jurisdiction with the District Courts over suits, and inserted proviso permitting the Custodian to acquit his responsibility by transferring the property of persons, who were enemies by reason of residence in enemy occupied countries, to those persons or their designated representatives.

CHANGE OF NAME

In subsec. (a), act June 25, 1936, substituted “the district court of the United States for the District of Columbia” for “the Supreme Court of the District of Columbia”, and act June 25, 1948, as amended by act May

24, 1949, substituted “United States District Court for the District of Columbia” for “district court of the United States for the District of Columbia”.

TRANSFER OF FUNCTIONS

Functions of Alien Property Custodian and Office of Alien Property Custodian, except those relating to property or interest in Philippines, vested in Attorney General. See notes set out under section 6 of this Appendix.

SETTLEMENT OF WAR CLAIMS ACT OF 1928

Act Mar. 10, 1928, ch. 167, 45 Stat. 254, known as the Settlement of War Claims Act of 1928, provided for the settlement of certain claims of American nationals against Germany, Austria, and Hungary, and the nationals of Germany, Austria, and Hungary against the United States, and for the ultimate return of all property held by the Alien Property Custodian.

Sections 9(c) to 19 of the act were classified to sections 9, 10, 20, and 22 to 31 of this Appendix. Sections 1 to 9(b) of the act are not classified to the Code.

The act has been amended to extend the time of presenting claims under it several times as follows: Acts Mar. 10, 1930, ch. 175, 46 Stat. 84; June 14, 1932, ch. 259, 47 Stat. 318; Mar. 3, 1933, ch. 210, 47 Stat. 1488; June 12, 1933, ch. 60, 48 Stat. 125; June 18, 1934, ch. 608, 48 Stat. 1019; June 27, 1934, ch. 851, 48 Stat. 1267; June 26, 1936, ch. 852, 49 Stat. 1984; May 23, 1938, ch. 263, 52 Stat. 437. The act of May 23, 1938, was the final extension and it allowed the presentation of claims up to 12 years after Mar. 10, 1938.

Act Aug. 6, 1947, ch. 506, 61 Stat. 789, amended section 4(b), (c) of act Mar. 10, 1928, to change the order of priority for payment of claims out of the German special deposit account.

EFFECT OF TERMINATION OF STATE OF WAR BETWEEN UNITED STATES AND GERMANY

Termination of war by Joint Res. Oct. 19, 1951, ch. 519, 65 Stat. 451, as not affecting property already vested, see said Joint Res. Oct. 19, 1951, set out as a note preceding section 1 of this Appendix.

WORLD WAR II ALIEN PROPERTY CUSTODIAN

Reestablishment and termination of Office of Alien Property Custodian during World War II, see notes set out under section 6 of this Appendix.

§ 10. Acts permitted; applications for patents, or registration of trade-marks or copyrights; payment of tax in relation thereto; licenses under enemy owned patent or copyright; statements by licensees; term and cancellation; suits against licensees; restraining infringements; powers of attorney; keeping secret inventions

Nothing contained in this Act [sections 1 to 6, 7 to 39, and 41 to 44 of this Appendix] shall be held to make unlawful any of the following acts:

(a) Repealed. Aug. 8, 1946, ch. 910, §13, 60 Stat. 944.

(b) Any citizen of the United States, or any corporation organized within the United States, may, when duly authorized by the President, pay to an enemy or ally of enemy any tax, annuity, or fee which may be required by the laws of such enemy or ally of enemy nation in relation to patents and trade-marks, prints, labels, and copyrights; and any such citizen or corporation may file and prosecute an application for letters patent or for registration of trade-mark, print, label, or copyright in the country of an enemy, or of an ally of enemy after first submitting such application to the President and receiving

license so to file and prosecute, and to pay the fees required by law and customary agents' fees, the maximum amount of which in each case shall be subject to the control of the President.

(c) Any citizen of the United States or any corporation organized within the United States desiring to manufacture, or cause to be manufactured, a machine, manufacture, composition of matter, or design, or to carry on, or to use any trade-mark, print, label or cause to be carried on, a process under any patent or copyrighted matter owned or controlled by an enemy or ally of enemy at any time during the existence of a state of war may apply to the President for a license; and the President is authorized to grant such a license, nonexclusive or exclusive as he shall deem best, provided he shall be of the opinion that such grant is for the public welfare, and that the applicant is able and intends in good faith to manufacture, or cause to be manufactured, the machine, manufacture, composition of matter, or design, or to carry on, or cause to be carried on, the process or to use the trade-mark, print, label or copyrighted matter. The President may prescribe the conditions of this license, including the fixing of prices of articles and products necessary to the health of the military and naval forces of the United States or the successful prosecution of the war, and the rules and regulations under which such license may be granted and the fee which shall be charged therefor, not exceeding \$100, and not exceeding one per centum of the fund deposited as hereinafter provided. Such license shall be a complete defense to any suit at law or in equity instituted by the enemy or ally of enemy owners of the letters patent, trade-mark, print, label or copyright, or otherwise, against the licensee for infringement or for damages, royalty, or other money award on account of anything done by the licensee under such license, except as provided in subsection (f) hereof.

(d) The licensee shall file with the President a full statement of the extent of the use and enjoyment of the license, and of the prices received in such form and at such stated periods (at least annually) as the President may prescribe; and the licensee shall pay at such times as may be required to the alien property custodian not to exceed five per centum of the gross sums received by the licensee from the sale of said inventions or use of the trade-mark, print, label or copyrighted matter, or, if the President shall so order, five per centum of the value of the use of such inventions, trade-marks, prints, labels or copyrighted matter to the licensee as established by the President; and sums so paid shall be deposited by said alien property custodian forthwith in the Treasury of the United States as a trust fund for the said licensee and for the owner of the said patent, trade-mark, print, label or copyright registration as hereinafter provided, to be paid from the Treasury upon order of the court, as provided in subsection (f) of this section, or upon the direction of the alien property custodian.

(e) Unless surrendered or terminated as provided in this Act [sections 1 to 6, 7 to 39, and 41 to 44 of this Appendix], any license granted hereunder shall continue during the term fixed in the license or in the absence of any such limita-

tion during the term of the patent, trade-mark, print, label, or copyright registration under which is it granted. Upon violation by the licensee of any of the provisions of this Act [said sections], or of the conditions of the license, the President may, after due notice and hearing, cancel any license granted by him.

(f) The owner of any patent, trade-mark, print, label, or copyright under which a license is granted hereunder may, after the end of the war and until the expiration of one year thereafter, file a bill in equity against the licensee in the district court of the United States for the district in which the said licensee resides, or, if a corporation, in which it has its principal place of business (to which suit the Treasurer of the United States shall be made a party), for recovery from the said licensee for all use and enjoyment of the said patented invention, trade-mark, print, label, or copyrighted matter: *Provided, however*, That whenever suit is brought, as above, notice shall be filed with the alien property custodian within thirty days after date of entry of suit: *Provided further*, That the licensee may make any and all defenses which would be available were no license granted. The court on due proceedings had may adjudge and decree to the said owner payment of a reasonable royalty. The amount of said judgment and decree, when final, shall be paid on order of the court to the owner of the patent from the fund deposited by the licensee, so far as such deposit will satisfy said judgment and decree; and the said payment shall be in full or partial satisfaction of said judgment and decree, as the facts may appear; and if, after payment of all such judgments and decrees, there shall remain any balance of said deposit, such balance shall be repaid to the licensee on order of the alien property custodian. If no suit is brought within one year after the end of the war, or no notice is filed as above required, then the licensee shall not be liable to make any further deposits, and all funds deposited by him shall be repaid to him on order of the alien property custodian. Upon entry of suit and notice filed as above required, or upon repayment of funds as above provided, the liability of the licensee to make further reports to the President shall cease.

If suit is brought as above provided, the court may, at any time, terminate the license, and may, in such event, issue an injunction to restrain the licensee from infringement thereafter, or the court, in case the licensee, prior to suit, shall have made investment of capital based on possession of the license, may continue the license for such period and upon such terms and with such royalties as it shall find to be just and reasonable.

In the case of any such patent, trade-mark, print, label, or copyright, conveyed, assigned, transferred, or delivered to the Alien Property Custodian or seized by him, any suit brought under this subsection, within the time limited therein, shall be considered as having been brought by the owner within the meaning of this subsection, in so far as such suit relates to royalties for the period prior to the sale by the Alien Property Custodian of such patent, trade-mark, print, label, or copyright, if brought either by the Alien Property Custodian or by the

person who was the owner thereof immediately prior to the date such patent, trade-mark, print, label, or copyright was seized or otherwise acquired by the Alien Property Custodian.

(g) Any enemy, or ally of enemy, may institute and prosecute suits in equity against any person other than a licensee under this Act [sections 1 to 6, 7 to 39, and 41 to 44 of this Appendix] to enjoin infringement of letters patent, trade-mark, print, label, and copyrights in the United States owned or controlled by said enemy or ally of enemy, in the same manner and to the extent that he would be entitled so to do if the United States was not at war: *Provided*, That no final judgment or decree shall be entered in favor of such enemy or ally of enemy by any court except after thirty days' notice to the alien property custodian. Such notice shall be in writing and shall be served in the same manner as civil process of Federal courts.

(h) All powers of attorney heretofore or hereafter granted by an enemy or ally of enemy to any person within the United States, in so far as they may be requisite to the performance of acts authorized in subsections (a) and (g) of this section, shall be valid.

(i) Whenever the publication of an invention by the granting of a patent may, in the opinion of the President, be detrimental to the public safety or defense, or may assist the enemy or endanger the successful prosecution of the war, he may order that the invention be kept secret and withhold the grant of a patent until the end of the war: *Provided*, That the invention disclosed in the application for said patent may be held abandoned upon it being established before or by the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office that, in violation of said order, said invention has been published or that an application for a patent therefor has been filed in any other country, by the inventor or his assigns or legal representatives, without the consent or approval of the commissioner or under a license of the President.

When an applicant whose patent is withheld as herein provided and who faithfully obeys the order of the President above referred to shall tender his invention to the Government of the United States for its use, he shall, if he ultimately receives a patent, have the right to sue for compensation in the United States Court of Federal Claims, such right to compensation to begin from the date of the use of the invention by the Government.

(Oct. 6, 1917, ch. 106, §10, 40 Stat. 420; Mar. 10, 1928, ch. 167, §19, 45 Stat. 277; Aug. 8, 1946, ch. 910, §13, 60 Stat. 944; Pub. L. 97-164, title I, §160(a)(17), Apr. 2, 1982, 96 Stat. 48; Pub. L. 102-572, title IX, §902(b)(1), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §4732(b)(26)], Nov. 29, 1999, 113 Stat. 1536, 1501A-585.)

PRIOR PROVISIONS

The provisions of subsection (i) of this section are similar to the provisions of act Oct. 6, 1917, ch. 95, 40 Stat. 394 (formerly classified to section 42 of Title 35, Patents), which was repealed and superseded by act Feb. 1, 1952, ch. 4, 66 Stat. 3. Act Feb. 1, 1952 was also

repealed by act July 19, 1952, ch. 950, §5, 66 Stat. 815. See section 181 et seq. of Title 35.

AMENDMENTS

1999—Subsec. (i). 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".

1992—Subsec. (i). Pub. L. 102-572 substituted "United States Court of Federal Claims" for "United States Claims Court".

1982—Subsec. (i). Pub. L. 97-164 substituted "United States Claims Court" for "Court of Claims".

1946—Subsec. (a). Act Aug. 8, 1946, repealed subsec. (a).

1928—Subsec. (f). Act Mar. 10, 1928, added par. at end.

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 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Oct. 29, 1992, see section 911 of Pub. L. 102-572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

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.

TRANSFER OF FUNCTIONS

Functions of Alien Property Custodian and Office of Alien Property Custodian, except those relating to property or interest in Philippines, vested in Attorney General. See notes set out under section 6 of this Appendix.

WORLD WAR II ALIEN PROPERTY CUSTODIAN

Reestablishment and termination of Office of Alien Property Custodian during World War II, see notes set out under section 6 of this Appendix.

PRESIDENT'S PROCLAMATION

Proclamation of May 24, 1917, 40 Stat. 1669, authorized citizens owning letters patent issued by the German Empire to pay any tax, annuity or fee required by the laws of the German Empire for preservation of their rights in the letters patent.

§ 11. Importations prohibited

Whenever during the present war the President shall find that the public safety so requires and shall make proclamation thereof it shall be unlawful to import into the United States from any country named in such proclamation any article or articles mentioned in such proclamation except at such time or times, and under such regulations or orders, and subject to such limitations and exceptions as the President shall prescribe, until otherwise ordered by the President or by Congress: *Provided, however*, That no preference shall be given to the ports of one State over those of another.

(Oct. 6, 1917, ch. 106, §11, 40 Stat. 422.)

EXTENSION OF IMPORT LIMITATIONS

Joint Res. Nov. 19, 1919, ch. 121, 41 Stat. 361, continued provisions of section 1 et seq. of this Appendix and proclamations limiting imports to Jan. 15, 1920.