

EFFECTIVE DATE; SPECIAL RULES

Pub. L. 101-580, § 2, Nov. 15, 1990, 104 Stat. 2863, provided that:

“(a) EFFECTIVE DATE.—Subject to subsections (b), (c), and (d) of this section, the amendments made by the first section of this Act [enacting this section] shall apply to all United States patents granted before, on, or after the date of enactment of this Act [Nov. 15, 1990], and to all applications for United States patents pending on or filed on or after such date of enactment.

“(b) FINAL DECISIONS.—The amendments made by the first section of this Act [enacting this section] shall not affect any final decision made by a court or the Patent and Trademark Office before the date of enactment of this Act [Nov. 15, 1990] with respect to a patent or an application for a patent, if no appeal from such decision is pending and the time for filing an appeal has expired.

“(c) PENDING CASES.—The amendments made by the first section of this Act [enacting this section] shall not affect the right of any party in any case pending in a court on the date of enactment of this Act [Nov. 15, 1990] to have the party’s rights determined on the basis of the substantive law in effect before such date of enactment.

“(d) NON-APPLICABILITY.—The amendments made by the first section of this Act [enacting this section] shall not apply to any process, machine, article of manufacture, or composition of matter, an embodiment of which was launched prior to the date of enactment of this Act [Nov. 15, 1990].”

CHAPTER 11—APPLICATION FOR PATENT

Sec.	
111.	Application.
112.	Specification.
113.	Drawings.
114.	Models, specimens.
115.	Inventor’s oath or declaration.
116.	Inventors.
117.	Death or incapacity of inventor.
118.	Filing by other than inventor.
119.	Benefit of earlier filing date; right of priority.
120.	Benefit of earlier filing date in the United States.
121.	Divisional applications.
122.	Confidential status of applications; publication of patent applications.
123.	Micro entity defined.

AMENDMENTS

2011—Pub. L. 112-29, § 10(g)(2), Sept. 16, 2011, 125 Stat. 319, which directed adding item 123 at the end of this chapter, was executed by adding the item at the end of the table of sections of this chapter, to reflect the probable intent of Congress.

Pub. L. 112-29, § 4(a)(4), Sept. 16, 2011, 125 Stat. 296, amended item 115 generally, substituting “Inventor’s oath or declaration” for “Oath of applicant”.

2002—Pub. L. 107-273, div. C, title III, § 13206(a)(7), Nov. 2, 2002, 116 Stat. 1904, substituted “Inventors” for “Joint inventors” in item 116.

1999—Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, § 4507(5)], Nov. 29, 1999, 113 Stat. 1536, 1501A-566, inserted “; publication of patent applications” after “applications” in item 122.

1994—Pub. L. 103-465, title V, § 532(c)(6), Dec. 8, 1994, 108 Stat. 4987, substituted “Application” for “Application for patent” in item 111 and “Benefit of earlier filing date; right of priority” for “Benefit of earlier filing date in foreign country; right of priority” in item 119.

§ 111. Application

(a) IN GENERAL.—

(1) WRITTEN APPLICATION.—An application for patent shall be made, or authorized to be made, by the inventor, except as otherwise

provided in this title, in writing to the Director.

(2) CONTENTS.—Such application shall include—

(A) a specification as prescribed by section 112;

(B) a drawing as prescribed by section 113; and

(C) an oath or declaration as prescribed by section 115.

(3) FEE, OATH OR DECLARATION, AND CLAIMS.—The application shall be accompanied by the fee required by law. The fee, oath or declaration, and 1 or more claims may be submitted after the filing date of the application, within such period and under such conditions, including the payment of a surcharge, as may be prescribed by the Director. Upon failure to submit the fee, oath or declaration, and 1 or more claims within such prescribed period, the application shall be regarded as abandoned.

(4) FILING DATE.—The filing date of an application shall be the date on which a specification, with or without claims, is received in the United States Patent and Trademark Office.

(b) PROVISIONAL APPLICATION.—

(1) AUTHORIZATION.—A provisional application for patent shall be made or authorized to be made by the inventor, except as otherwise provided in this title, in writing to the Director. Such application shall include—

(A) a specification as prescribed by section 112(a); and

(B) a drawing as prescribed by section 113.

(2) CLAIM.—A claim, as required by subsections (b) through (e) of section 112, shall not be required in a provisional application.

(3) FEE.—The application shall be accompanied by the fee required by law. The fee may be submitted after the filing date of the application, within such period and under such conditions, including the payment of a surcharge, as may be prescribed by the Director. Upon failure to submit the fee within such prescribed period, the application shall be regarded as abandoned.

(4) FILING DATE.—The filing date of a provisional application shall be the date on which a specification, with or without claims, is received in the United States Patent and Trademark Office.

(5) ABANDONMENT.—Notwithstanding the absence of a claim, upon timely request and as prescribed by the Director, a provisional application may be treated as an application filed under subsection (a). Subject to section 119(e)(3), if no such request is made, the provisional application shall be regarded as abandoned 12 months after the filing date of such application and shall not be subject to revival after such 12-month period.

(6) OTHER BASIS FOR PROVISIONAL APPLICATION.—Subject to all the conditions in this subsection and section 119(e), and as prescribed by the Director, an application for patent filed under subsection (a) may be treated as a provisional application for patent.

(7) NO RIGHT OF PRIORITY OR BENEFIT OF EARLIEST FILING DATE.—A provisional application shall not be entitled to the right of priority of

any other application under section 119, 365(a), or 386(a) or to the benefit of an earlier filing date in the United States under section 120, 121, 365(c), or 386(c).

(8) APPLICABLE PROVISIONS.—The provisions of this title relating to applications for patent shall apply to provisional applications for patent, except as otherwise provided, and except that provisional applications for patent shall not be subject to sections 131 and 135.

(c) PRIOR FILED APPLICATION.—Notwithstanding the provisions of subsection (a), the Director may prescribe the conditions, including the payment of a surcharge, under which a reference made upon the filing of an application under subsection (a) to a previously filed application, specifying the previously filed application by application number and the intellectual property authority or country in which the application was filed, shall constitute the specification and any drawings of the subsequent application for purposes of a filing date. A copy of the specification and any drawings of the previously filed application shall be submitted within such period and under such conditions as may be prescribed by the Director. A failure to submit the copy of the specification and any drawings of the previously filed application within the prescribed period shall result in the application being regarded as abandoned. Such application shall be treated as having never been filed, unless—

(1) the application is revived under section 27; and

(2) a copy of the specification and any drawings of the previously filed application are submitted to the Director.

(July 19, 1952, ch. 950, 66 Stat. 798; Pub. L. 97-247, § 5, Aug. 27, 1982, 96 Stat. 319; Pub. L. 103-465, title V, § 532(b)(3), Dec. 8, 1994, 108 Stat. 4986; Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, §§ 4732(a)(10)(A), 4801(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A-582, 1501A-588; Pub. L. 107-273, div. C, title III, § 13206(b)(1)(B), Nov. 2, 2002, 116 Stat. 1906; Pub. L. 112-29, §§ 3(e)(2), 4(a)(3), (d), 20(j), Sept. 16, 2011, 125 Stat. 287, 295, 296, 335; Pub. L. 112-211, title I, § 102(3), title II, § 201(a), Dec. 18, 2012, 126 Stat. 1531, 1533.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 33 (R.S. 4888, amended (1) Mar. 3, 1915, ch. 94, § 1, 38 Stat. 958; (2) May 23, 1930, ch. 312, § 2, 46 Stat. 376).

The corresponding section of existing statute is divided into an introductory section relating to the application generally (this section) and a section on the specification (sec. 112).

The parts of the application are specified and the requirement for signature is placed in this general section so as to insure that only one signature will suffice.

AMENDMENTS

2012—Subsec. (a)(3), (4). Pub. L. 112-211, § 201(a)(1), added pars. (3) and (4) and struck out former pars. (3) and (4) which related to fee and oath or declaration and failure to submit.

Subsec. (b)(3), (4). Pub. L. 112-211, § 201(a)(2), added pars. (3) and (4) and struck out former pars. (3) and (4) which related to fee and filing date of a provisional application.

Subsec. (b)(7). Pub. L. 112-211, § 102(3), substituted “section 119, 365(a), or 386(a)” for “section 119 or 365(a)”

and “section 120, 121, 365(c), or 386(c)” for “section 120, 121, or 365(c)”.

Subsec. (c). Pub. L. 112-211, § 201(a)(3), added subsec. (c).

2011—Subsec. (a)(2)(A). Pub. L. 112-29, § 20(j), struck out “of this title” after “112”.

Subsec. (a)(2)(B). Pub. L. 112-29, § 20(j), struck out “of this title” after “113”.

Subsec. (a)(2)(C). Pub. L. 112-29, § 20(j), struck out “of this title” after “115”.

Pub. L. 112-29, § 4(a)(3)(A), substituted “or declaration” for “by the applicant”.

Subsec. (a)(3). Pub. L. 112-29, § 4(a)(3)(B), (C), inserted “or declaration” after “and oath” in heading and text.

Subsec. (a)(4). Pub. L. 112-29, § 4(a)(3)(C), inserted “or declaration” after “and oath” in two places.

Subsec. (b)(1)(A). Pub. L. 112-29, § 4(d)(1), substituted “section 112(a)” for “the first paragraph of section 112 of this title”.

Subsec. (b)(1)(B). Pub. L. 112-29, § 20(j), struck out “of this title” after “113”.

Subsec. (b)(2). Pub. L. 112-29, § 4(d)(2), substituted “subsections (b) through (e) of section 112,” for “the second through fifth paragraphs of section 112.”

Subsec. (b)(5). Pub. L. 112-29, § 20(j), struck out “of this title” after “119(e)(3)”.

Subsec. (b)(6). Pub. L. 112-29, § 20(j), struck out “of this title” after “119(e)”.

Subsec. (b)(7). Pub. L. 112-29, § 20(j), struck out “of this title” after “365(a)” and after “365(c)”.

Subsec. (b)(8). Pub. L. 112-29, § 20(j), struck out “of this title” before period at end.

Pub. L. 112-29, § 3(e)(2), substituted “sections 131 and 135” for “sections 115, 131, 135, and 157”.

2002—Subsecs. (a)(1), (3), (4), (b)(1), (3)(B), (C), (6). Pub. L. 107-273 made technical correction to directory language of Pub. L. 106-113, § 1000(a)(9) [title IV, § 4732(a)(10)(A)]. See 1999 Amendment notes below.

1999—Subsecs. (a)(1), (3), (4), (b)(1), (3)(B), (C). Pub. L. 106-113, § 1000(a)(9) [title IV, § 4732(a)(10)(A)], as amended by Pub. L. 107-273, substituted “Director” for “Commissioner”.

Subsec. (b)(5). Pub. L. 106-113, § 1000(a)(9) [title IV, § 4801(a)], amended heading and text of par. (5) generally. Prior to amendment, text read as follows: “The provisional application shall be regarded as abandoned 12 months after the filing date of such application and shall not be subject to revival thereafter.”

Subsec. (b)(6). Pub. L. 106-113, § 1000(a)(9) [title IV, § 4732(a)(10)(A)], as amended by Pub. L. 107-273, substituted “Director” for “Commissioner”.

1994—Pub. L. 103-465 amended section generally. Prior to amendment, section read as follows: “Application for patent shall be made, or authorized to be made, by the inventor, except as otherwise provided in this title, in writing to the Commissioner. Such application shall include (1) a specification as prescribed by section 112 of this title; (2) a drawing as prescribed by section 113 of this title; and (3) an oath by the applicant as prescribed by section 115 of this title. The application must be accompanied by the fee required by law. The fee and oath may be submitted after the specification and any required drawing are submitted, within such period and under such conditions, including the payment of a surcharge, as may be prescribed by the Commissioner. Upon failure to submit the fee and oath within such prescribed period, the application shall be regarded as abandoned, unless it is shown to the satisfaction of the Commissioner that the delay in submitting the fee and oath was unavoidable. The filing date of an application shall be the date on which the specification and any required drawing are received in the Patent and Trademark Office.”

1982—Pub. L. 97-247 inserted “, or authorized to be made,” after “shall be made”, struck out the colon after “shall include”, struck out “signed by the applicant and” after “The application”, and inserted provisions that the fee and oath may be submitted after the specification and any required drawing are submitted, within such period and under such conditions, includ-

ing the payment of a surcharge, as may be prescribed by the Commissioner, that upon failure to submit the fee and oath within such prescribed period, the application shall be regarded as abandoned, unless it is shown to the satisfaction of the Commissioner that the delay in submitting the fee and oath was unavoidable, and that the filing date of an application shall be the date on which the specification and any required drawing are received in the Patent and Trademark Office.

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by section 102(3) 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 (May 13, 2015), 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(a) of Pub. L. 112-211 effective on the date that is 1 year after Dec. 18, 2012, applicable to certain patents and applications for patent, and not effective with respect to patents in litigation commenced before the 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

Pub. L. 112-29, §3(e)(3), Sept. 16, 2011, 125 Stat. 288, provided that: “The amendments made by this subsection [amending this section and repealing section 157 of this title] shall take effect upon the expiration of the 18-month period beginning on the date of the enactment of this Act [Sept. 16, 2011], and shall apply to any request for a statutory invention registration filed on or after that effective date.”

Pub. L. 112-29, §4(e), Sept. 16, 2011, 125 Stat. 297, provided that: “The amendments made by this section [amending this section and sections 112, 115, 118, 121, and 251 of this title] shall take effect upon the expiration of the 1-year period beginning on the date of the enactment of this Act [Sept. 16, 2011] and shall apply to any patent application that is filed on or after that effective date.”

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(7) of Pub. L. 112-29, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 1000(a)(9) [title IV, §4732(a)(10)(A)] of 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.

Amendment by section 1000(a)(9) [title IV, §4801(a)] of Pub. L. 106-113 effective Nov. 29, 1999, and applicable to any provisional application filed on or after June 8, 1995, see section 1000(a)(9) [title IV, §4801(d)] of Pub. L. 106-113, set out as a note under section 119 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 1982 AMENDMENT

Amendment by Pub. L. 97-247 effective six months after Aug. 27, 1982, see section 17(c) of Pub. L. 97-247, set

out as an Effective Date note under section 294 of this title.

EMERGENCY RELIEF FROM POSTAL SITUATION AFFECTING PATENT, TRADEMARK, AND OTHER FEDERAL CASES

Pub. L. 92-34, June 30, 1971, 85 Stat. 87, provided that a patent or trademark application would be considered filed in the United States Patent Office on the date that it would have been received by the Patent Office except for the delay caused by emergency situation affecting postal service from Mar. 18, 1970 to Mar. 30, 1970, if a claim was made.

§ 112. Specification

(a) IN GENERAL.—The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor or joint inventor of carrying out the invention.

(b) CONCLUSION.—The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the inventor or a joint inventor regards as the invention.

(c) FORM.—A claim may be written in independent or, if the nature of the case admits, in dependent or multiple dependent form.

(d) REFERENCE IN DEPENDENT FORMS.—Subject to subsection (e), a claim in dependent form shall contain a reference to a claim previously set forth and then specify a further limitation of the subject matter claimed. A claim in dependent form shall be construed to incorporate by reference all the limitations of the claim to which it refers.

(e) REFERENCE IN MULTIPLE DEPENDENT FORM.—A claim in multiple dependent form shall contain a reference, in the alternative only, to more than one claim previously set forth and then specify a further limitation of the subject matter claimed. A multiple dependent claim shall not serve as a basis for any other multiple dependent claim. A multiple dependent claim shall be construed to incorporate by reference all the limitations of the particular claim in relation to which it is being considered.

(f) ELEMENT IN CLAIM FOR A COMBINATION.—An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.

(July 19, 1952, ch. 950, 66 Stat. 798; Pub. L. 89-83, §9, July 24, 1965, 79 Stat. 261; Pub. L. 94-131, §7, Nov. 14, 1975, 89 Stat. 691; Pub. L. 112-29, §4(c), Sept. 16, 2011, 125 Stat. 296.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §33 (R.S. 4888, amended (1) Mar. 3, 1915, ch. 94, §1, 38 Stat. 958; (2) May 23, 1930, ch. 312, §2, 46 Stat. 376).

The sentence relating to signature of the specification is omitted in view of the general requirement for a signature in section 111.