

DNA, recombinant RNA, hybridoma technology, or other processes involving site specific genetic manipulation techniques” after “March 4, 1913” and “or veterinary biological products” after “sale of drugs”.

Subsec. (e)(2). Pub. L. 100-670, §201(i)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “It shall be an act of infringement to submit an application under section 505(j) of the Federal Food, Drug, and Cosmetic Act or described in section 505(b)(2) of such Act for a drug claimed in a patent or the use of which is claimed in a patent, if the purpose of such submission is to obtain approval under such Act to engage in the commercial manufacture, use, or sale of a drug claimed in a patent or the use of which is claimed in a patent before the expiration of such patent.”

Subsec. (e)(4). Pub. L. 100-670, §201(i)(3), inserted “or veterinary biological product” after “drug” in subpars. (A) to (C).

Subsec. (g). Pub. L. 100-418 added subsec. (g).

1984—Subsec. (e). Pub. L. 98-417 added subsec. (e).

Subsec. (f). Pub. L. 98-622 added subsec. (f).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-465 effective on date that is one year after date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], with provisions relating to earliest filed patent application, see section 534(a), (b)(3) of Pub. L. 103-465, set out as a note under section 154 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-560 effective with respect to violations that occur on or after Oct. 28, 1992, see section 4 of Pub. L. 102-560, set out as a note under section 2541 of Title 7, Agriculture.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-703, title II, §202, Nov. 19, 1988, 102 Stat. 4676, provided that: “The amendment made by this title [amending this section] shall apply only to cases filed on or after the date of the enactment of this Act [Nov. 19, 1988].”

Pub. L. 100-418, title IX, §9006, Aug. 23, 1988, 102 Stat. 1566, provided that:

“(a) IN GENERAL.—The amendments made by this subtitle [subtitle A (§§9001-9007) of title IX of Pub. L. 100-418, enacting section 295 of this title and amending this section and sections 154 and 287 of this title] take effect 6 months after the date of enactment of this Act [Aug. 23, 1988] and, subject to subsections (b) and (c), shall apply only with respect to products made or imported after the effective date of the amendments made by this subtitle.

“(b) EXCEPTIONS.—The amendments made by this subtitle shall not abridge or affect the right of any person or any successor in business of such person to continue to use, sell, or import any specific product already in substantial and continuous sale or use by such person in the United States on January 1, 1988, or for which substantial preparation by such person for such sale or use was made before such date, to the extent equitable for the protection of commercial investments made or business commenced in the United States before such date. This subsection shall not apply to any person or any successor in business of such person using, selling, or importing a product produced by a patented process that is the subject of a process patent enforcement action commenced before January 1, 1987, before the International Trade Commission, that is pending or in which an order has been entered.

“(c) RETENTION OF OTHER REMEDIES.—The amendments made by this subtitle shall not deprive a patent owner of any remedies available under subsections (a) through (f) of section 271 of title 35, United States Code, under section 337 of the Tariff Act of 1930 [19 U.S.C. 1337], or under any other provision of law.”

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-622 applicable only to the supplying, or causing to be supplied, of any component

or components of a patented invention after Nov. 8, 1984, see section 106(c) of Pub. L. 98-622, set out as a note under section 103 of this title.

REPORTS TO CONGRESS; EFFECT ON DOMESTIC INDUSTRIES OF PROCESS PATENT AMENDMENTS ACT OF 1988

Pub. L. 100-418, title IX, §9007, Aug. 23, 1988, 102 Stat. 1567, provided that the Secretary of Commerce was to make annual reports to Congress covering each of the successive five 1-year periods beginning 6 months after Aug. 23, 1988, on the effect of the amendments made by subtitle A (§§9001-9007) of title IX of Pub. L. 100-418, enacting section 295 of this title and amending sections 154, 271, and 287 of this title, on those domestic industries that submit complaints to the Department of Commerce alleging that their legitimate sources of supply have been adversely affected by the amendments.

§ 272. Temporary presence in the United States

The use of any invention in any vessel, aircraft or vehicle of any country which affords similar privileges to vessels, aircraft or vehicles of the United States, entering the United States temporarily or accidentally, shall not constitute infringement of any patent, if the invention is used exclusively for the needs of the vessel, aircraft or vehicle and is not offered for sale or sold in or used for the manufacture of anything to be sold in or exported from the United States.

(July 19, 1952, ch. 950, 66 Stat. 812; Pub. L. 103-465, title V, §533(b)(4), Dec. 8, 1994, 108 Stat. 4989.)

HISTORICAL AND REVISION NOTES

This section follows the requirement of the International Convention for the Protection of Industrial Property, to which the United States is a party, and also codifies the holding of the Supreme Court that use of a patented invention on board a foreign ship does not infringe a patent.

AMENDMENTS

1994—Pub. L. 103-465 substituted “not offered for sale or sold” for “not sold”.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-465 effective on date that is one year after date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], with provisions relating to earliest filed patent application, see section 534(a), (b)(3) of Pub. L. 103-465, set out as a note under section 154 of this title.

§ 273. Defense to infringement based on prior commercial use

(a) IN GENERAL.—A person shall be entitled to a defense under section 282(b) with respect to subject matter consisting of a process, or consisting of a machine, manufacture, or composition of matter used in a manufacturing or other commercial process, that would otherwise infringe a claimed invention being asserted against the person if—

(1) such person, acting in good faith, commercially used the subject matter in the United States, either in connection with an internal commercial use or an actual arm's length sale or other arm's length commercial transfer of a useful end result of such commercial use; and

(2) such commercial use occurred at least 1 year before the earlier of either—