

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)—

(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 proposes 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)—

(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), 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) for any other purpose than that stated in the application. Nor shall the Commission grant any patent license to any other applicant for a patent license on the same patent without an application being made by such applicant pursuant to subsection (c), and without separate notification and hearing as provided in subsection (d), and without a separate finding as provided in subsection (e).

**(g) Royalty fees**

The owner of the patent affected by a declaration or a finding made by the Commission pursuant to subsection (b) or (e) shall be entitled to a reasonable royalty fee from the licensee for any use of an invention or discovery licensed by this section. Such royalty fee may be agreed upon by such owner and the patent licensee, or in the absence of such agreement shall be determined for each patent license by the Commission pursuant to section 2187(c) of this title.

**(h) Effective period**

The provisions of this section shall apply to any patent the application for which shall have been filed before September 1, 1979.

(Aug. 1, 1946, ch. 724, title I, §153, as added Aug. 20, 1954, ch. 1073, §1, 68 Stat. 945; amended Pub. L. 86-50, §114, June 23, 1959, 73 Stat. 87; Pub. L. 88-394, §1, Aug. 1, 1964, 78 Stat. 376; Pub. L. 91-161, §1, Dec. 24, 1969, 83 Stat. 444; Pub. L. 93-377, §6, Aug. 17, 1974, 88 Stat. 475; renumbered title I, Pub. L. 102-486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (b), and (e)(3), was in the original "this Act", meaning act Aug.

1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 919, known as the Atomic Energy Act of 1954, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1811(c)(1), (2) of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

AMENDMENTS

1974—Subsec. (h). Pub. L. 93-377 substituted "September 1, 1979" for "September 1, 1974".

1969—Subsec. (h). Pub. L. 91-161 substituted "September 1, 1974" for "September 1, 1969".

1964—Subsec. (h). Pub. L. 88-394 substituted "September 1, 1969" for "September 1, 1964".

1959—Subsec. (h). Pub. L. 86-50 substituted "September 1, 1964" for "September 1, 1959".

**§ 2184. Injunctions; measure of damages**

No court shall have jurisdiction or power to stay, restrain, or otherwise enjoin the use of any invention or discovery by a patent licensee, to the extent that such use is licensed by section 2183(b) or 2183(e) of this title. If, in any action against such patent licensee, the court shall determine that the defendant is exercising such license, the measure of damages shall be the royalty fee determined pursuant to section 2187(c) of this title, together with such costs, interest, and reasonable attorney's fees as may be fixed by the court. If no royalty fee has been determined, the court shall stay the proceeding until the royalty fee is determined pursuant to section 2187(c) of this title. If any such patent licensee shall fail to pay such royalty fee, the patentee may bring an action in any court of competent jurisdiction for such royalty fee, together with such costs, interest, and reasonable attorney's fees as may be fixed by the court.

(Aug. 1, 1946, ch. 724, title I, §154, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 946; renumbered title I, Pub. L. 102-486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1811(c)(3) of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

**§ 2185. Prior art**

In connection with applications for patents covered by this subchapter, the fact that the invention or discovery was known or used before shall be a bar to the patenting of such invention or discovery even though such prior knowledge or use was under secrecy within the atomic energy program of the United States.

(Aug. 1, 1946, ch. 724, title I, §155, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 947; renumbered title I, Pub. L. 102-486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See, also, notes set out under those sections.