

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112-274 effective Jan. 14, 2013, and applicable to proceedings commenced on or after such date, see section 1(n) of Pub. L. 112-274, set out as a note under section 5 of this title.

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112-29, §22(b), Sept. 16, 2011, 125 Stat. 336, provided that: "The amendments made by this section [amending this section] shall take effect on October 1, 2011."

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.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-358 effective Oct. 1, 1998, see section 5 of Pub. L. 105-358, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-247 effective Oct. 1, 1982, see section 17(a) of Pub. L. 97-247, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-517 effective on first day of first fiscal year beginning on or after one calendar year after Dec. 12, 1980, subject to authorization of appropriation account credits from collected reexamination fees prior to the effective date, made available for payment of reexamination proceedings costs, see section 8(c) of Pub. L. 96-517, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-131 effective Jan. 24, 1978, and applicable on and after that date to patent applications filed in the United States and to international applications, where applicable, see section 11 of Pub. L. 94-131, set out as an Effective Date note under section 351 of this title.

AUTHORIZATION OF AMOUNTS AVAILABLE TO THE PATENT AND TRADEMARK OFFICE

Pub. L. 107-273, div. C, title III, §13102, Nov. 2, 2002, 116 Stat. 1899, provided that:

"(a) IN GENERAL.—There are authorized to be appropriated to the United States Patent and Trademark Office for salaries and necessary expenses for each of the fiscal years 2003 through 2008 an amount equal to the fees estimated by the Secretary of Commerce to be collected in each such fiscal year, respectively, under—

- "(1) title 35, United States Code; and
"(2) the Act entitled 'An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes', approved July 5, 1946 (15 U.S.C. 1051 et seq.) (commonly referred to as the Trademark Act of 1946).

"(b) ESTIMATES.—Not later than February 15, of each fiscal year, the Undersecretary of Commerce for Intellectual Property and the Director of the Patent and Trademark Office (in this subtitle [subtitle A (§§13101-13106) of title III of div. C of Pub. L. 107-273, amending sections 134, 141, 303, 312, and 315 of this title and enacting provisions set out as notes under sections 2, 134, and 303 of this title] referred to as the Director) shall submit an estimate of all fees referred to under subsection (a) to be collected in the next fiscal year to the chairman and ranking member of—

- "(1) the Committees on Appropriations and Judiciary of the Senate; and
"(2) the Committees on Appropriations and Judiciary of the House of Representatives."

APPROPRIATIONS AUTHORIZED TO BE CARRIED OVER

Pub. L. 100-703, title I, §102, Nov. 19, 1988, 102 Stat. 4674, provided that: "Amounts appropriated under this Act and such fees as may be collected under title 35, United States Code, and the Trademark Act of 1946 (15 U.S.C. 1051 and following) may remain available until expended."

Similar provisions were contained in the following prior authorization act:

Pub. L. 99-607, §2, Nov. 6, 1986, 100 Stat. 3470.

PART II—PATENTABILITY OF INVENTIONS AND GRANT OF PATENTS

Table with 2 columns: Chap. and Sec.
10. Patentability of Inventions ..... 100
11. Application for Patent ..... 111
12. Examination of Application ..... 131
13. Review of Patent and Trademark Office Decisions ..... 141
14. Issue of Patent ..... 151
15. Plant Patents ..... 161
16. Designs ..... 171
17. Secrecy of Certain Inventions and Filing Applications Abroad 1 ..... 181
18. Patent Rights in Inventions Made with Federal Assistance ..... 200

AMENDMENTS

2002—Pub. L. 107-273, div. C, title III, §13206(a)(6), Nov. 2, 2002, 116 Stat. 1904, substituted "Examination of Application" for "Examination of Applications" in heading of chapter 12.

1982—Pub. L. 97-256, title I, §101(6), Sept. 8, 1982, 96 Stat. 816, added item for chapter 18.

1975—Pub. L. 93-596, §1, Jan. 2, 1975, 88 Stat. 1949, substituted "Patent and Trademark Office" for "Patent Office" in heading of chapter 13.

CHAPTER 10—PATENTABILITY OF INVENTIONS

Table with 2 columns: Sec. and Description
100. Definitions.
101. Inventions patentable.
102. Conditions for patentability; novelty.
103. Conditions for patentability; non-obvious subject matter.
[104. Repealed.]
105. Inventions in outer space.

AMENDMENTS

2011—Pub. L. 112-29, §3(b)(3), (d), Sept. 16, 2011, 125 Stat. 287, substituted in item 102 "Conditions for patentability; novelty" for "Conditions for patentability; novelty and loss of right to patent" and struck out item 104 "Invention made abroad".

1990—Pub. L. 101-580, §1(b), Nov. 15, 1990, 104 Stat. 2863, added item 105.

§ 100. Definitions

When used in this title unless the context otherwise indicates—

(a) The term "invention" means invention or discovery.

(b) The term "process" means process, art or method, and includes a new use of a known process, machine, manufacture, composition of matter, or material.

(c) The terms "United States" and "this country" mean the United States of America, its territories and possessions.

(d) The word "patentee" includes not only the patentee to whom the patent was issued but also the successors in title to the patentee.

1 So in original. Does not conform to chapter heading.

(e) The term “third-party requester” means a person requesting *ex parte* reexamination under section 302 who is not the patent owner.

(f) The term “inventor” means the individual or, if a joint invention, the individuals collectively who invented or discovered the subject matter of the invention.

(g) The terms “joint inventor” and “coinventor” mean any 1 of the individuals who invented or discovered the subject matter of a joint invention.

(h) The term “joint research agreement” means a written contract, grant, or cooperative agreement entered into by 2 or more persons or entities for the performance of experimental, developmental, or research work in the field of the claimed invention.

(i)(1) The term “effective filing date” for a claimed invention in a patent or application for patent means—

(A) if subparagraph (B) does not apply, the actual filing date of the patent or the application for the patent containing a claim to the invention; or

(B) the filing date of the earliest application for which the patent or application is entitled, as to such invention, to a right of priority under section 119, 365(a), 365(b), 386(a), or 386(b) or to the benefit of an earlier filing date under section 120, 121, 365(c), or 386(c).

(2) The effective filing date for a claimed invention in an application for reissue or reissued patent shall be determined by deeming the claim to the invention to have been contained in the patent for which reissue was sought.

(j) The term “claimed invention” means the subject matter defined by a claim in a patent or an application for a patent.

(July 19, 1952, ch. 950, 66 Stat. 797; Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4603], Nov. 29, 1999, 113 Stat. 1536, 1501A–567; Pub. L. 112–29, §3(a), Sept. 16, 2011, 125 Stat. 285; Pub. L. 112–211, title I, §102(1), Dec. 18, 2012, 126 Stat. 1531.)

#### HISTORICAL AND REVISION NOTES

Paragraph (a) is added only to avoid repetition of the phrase “invention or discovery” and its derivatives throughout the revised title. The present statutes use the phrase “invention or discovery” and derivatives.

Paragraph (b) is noted under section 101.

Paragraphs (c) and (d) are added to avoid the use of long expressions in various parts of the revised title.

#### AMENDMENTS

2012—Subsec. (i)(1)(B). Pub. L. 112–211 substituted “right of priority under section 119, 365(a), 365(b), 386(a), or 386(b) or to the benefit of an earlier filing date under section 120, 121, 365(c), or 386(c)” for “right of priority under section 119, 365(a), or 365(b) or to the benefit of an earlier filing date under section 120, 121, or 365(c)”.

2011—Subsec. (e). Pub. L. 112–29, §3(a)(1), struck out “or *inter partes* reexamination under section 311” after “302”.

Subsecs. (f) to (j). Pub. L. 112–29, §3(a)(2), added subsecs. (f) to (j).

1999—Subsec. (e). Pub. L. 106–113 added subsec. (e).

#### EFFECTIVE DATE OF 2012 AMENDMENT

Pub. L. 112–211, title I, §103, Dec. 18, 2012, 126 Stat. 1532, provided that:

“(a) IN GENERAL.—The amendments made by this title [enacting part V of this title and amending this section and sections 102, 111, 115, 120, 154, 173, 365, and 366 of this title] shall take effect on the later of—

“(1) the date that is 1 year after the date of the enactment of this Act [Dec. 18, 2012]; or

“(2) the date of entry into force of the treaty with respect to the United States [May 13, 2015].

“(b) APPLICABILITY OF AMENDMENTS.—

“(1) IN GENERAL.—Subject to paragraph (2), the amendments made by this title shall apply only to international design applications, international applications, and national applications filed on and after the effective date set forth in subsection (a), and patents issuing thereon.

“(2) EXCEPTION.—Sections 100(i) and 102(d) of title 35, United States Code, as amended by this title, shall not apply to an application, or any patent issuing thereon, unless it is described in section 3(n)(1) of the Leahy-Smith America Invents Act [Pub. L. 112–29] (35 U.S.C. 100 note).

“(c) DEFINITIONS.—For purposes of this section—

“(1) the terms ‘treaty’ and ‘international design application’ have the meanings given those terms in section 381 of title 35, United States Code, as added by this title;

“(2) the term ‘international application’ has the meaning given that term in section 351(c) of title 35, United States Code; and

“(3) the term ‘national application’ means ‘national application’ within the meaning of chapter 38 of title 35, United States Code, as added by this title.”

#### EFFECTIVE DATE OF 2011 AMENDMENT; SAVINGS PROVISIONS

Pub. L. 112–29, §3(n), Sept. 16, 2011, 125 Stat. 293, provided that:

“(1) IN GENERAL.—Except as otherwise provided in this section [amending this section and sections 32, 102, 103, 111, 119, 120, 134, 135, 145, 146, 154, 172, 202, 287, 291, 305, 363, 374, and 375 of this title, repealing sections 104 and 157 of this title, and enacting provisions set out as notes under sections 32, 102, and 111 of this title], the amendments made by this section 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 application for patent, and to any patent issuing thereon, that contains or contained at any time—

“(A) a claim to a claimed invention that has an effective filing date as defined in section 100(i) of title 35, United States Code, that is on or after the effective date described in this paragraph; or

“(B) a specific reference under section 120, 121, or 365(c) of title 35, United States Code, to any patent or application that contains or contained at any time such a claim.

“(2) INTERFERING PATENTS.—The provisions of sections 102(g), 135, and 291 of title 35, United States Code, as in effect on the day before the effective date set forth in paragraph (1) of this subsection, shall apply to each claim of an application for patent, and any patent issued thereon, for which the amendments made by this section also apply, if such application or patent contains or contained at any time—

“(A) a claim to an invention having an effective filing date as defined in section 100(i) of title 35, United States Code, that occurs before the effective date set forth in paragraph (1) of this subsection; or

“(B) a specific reference under section 120, 121, or 365(c) of title 35, United States Code, to any patent or application that contains or contained at any time such a claim.”

#### EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 effective Nov. 29, 1999, and applicable to any patent issuing from an original application filed in the United States on or after that date, see section 1000(a)(9) [title IV, §4608(a)] of Pub. L. 106–113, set out as a note under section 41 of this title.

### § 101. Inventions patentable

Whoever invents or discovers any new and useful process, machine, manufacture, or composi-