

vised at Stockholm, July 14, 1967, come into force with respect to the United States [Aug. 25, 1973] and shall apply to applications thereafter filed in the United States.”

SAVINGS PROVISIONS

Provisions of former subsec. (g) of this section, as in effect on the day before the expiration of the 18-month period beginning on Sept. 16, 2011, apply to each claim of certain applications for patent, and certain patents issued thereon, for which the amendments made by section 3 of Pub. L. 112-29 also apply, see section 3(n)(2) of Pub. L. 112-29, set out as an Effective Date of 2011 Amendment; Savings Provisions note under section 100 of this title.

CONTINUITY OF INTENT UNDER THE CREATE ACT

Pub. L. 112-29, §3(b)(2), Sept. 16, 2011, 125 Stat. 287, provided that: “The enactment of section 102(c) of title 35, United States Code, under paragraph (1) of this subsection is done with the same intent to promote joint research activities that was expressed, including in the legislative history, through the enactment of the Cooperative Research and Technology Enhancement Act of 2004 (Public Law 108-453; the ‘CREATE Act’) [see Short Title of 2004 Amendment note set out under section 1 of this title], the amendments of which are stricken by subsection (c) of this section [amending section 103 of this title]. The United States Patent and Trademark Office shall administer section 102(c) of title 35, United States Code, in a manner consistent with the legislative history of the CREATE Act that was relevant to its administration by the United States Patent and Trademark Office.”

TAX STRATEGIES DEEMED WITHIN THE PRIOR ART

Pub. L. 112-29, §14, Sept. 16, 2011, 125 Stat. 327, provided that:

“(a) IN GENERAL.—For purposes of evaluating an invention under section 102 or 103 of title 35, United States Code, any strategy for reducing, avoiding, or deferring tax liability, whether known or unknown at the time of the invention or application for patent, shall be deemed insufficient to differentiate a claimed invention from the prior art.

“(b) DEFINITION.—For purposes of this section, the term ‘tax liability’ refers to any liability for a tax under any Federal, State, or local law, or the law of any foreign jurisdiction, including any statute, rule, regulation, or ordinance that levies, imposes, or assesses such tax liability.

“(c) EXCLUSIONS.—This section does not apply to that part of an invention that—

“(1) is a method, apparatus, technology, computer program product, or system, that is used solely for preparing a tax or information return or other tax filing, including one that records, transmits, transfers, or organizes data related to such filing; or

“(2) is a method, apparatus, technology, computer program product, or system used solely for financial management, to the extent that it is severable from any tax strategy or does not limit the use of any tax strategy by any taxpayer or tax advisor.

“(d) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to imply that other business methods are patentable or that other business method patents are valid.

“(e) EFFECTIVE DATE; APPLICABILITY.—This section shall take effect on the date of the enactment of this Act [Sept. 16, 2011] and shall apply to any patent application that is pending on, or filed on or after, that date, and to any patent that is issued on or after that date.”

EMERGENCY RELIEF FROM POSTAL SITUATION AFFECTING PATENT CASES

Relief as to filing date of patent application or patent affected by postal situation beginning on Mar. 18, 1970, and ending on or about Mar. 30, 1970, but patents issued

with earlier filing dates not effective as prior art under subsec. (e) of this section as of such earlier filing dates, see section 1(a) of Pub. L. 92-34, formerly set out in a note under section 111 of this title.

§ 103. Conditions for patentability; non-obvious subject matter

A patent for a claimed invention may not be obtained, notwithstanding that the claimed invention is not identically disclosed as set forth in section 102, if the differences between the claimed invention and the prior art are such that the claimed invention as a whole would have been obvious before the effective filing date of the claimed invention to a person having ordinary skill in the art to which the claimed invention pertains. Patentability shall not be negated by the manner in which the invention was made.

(July 19, 1952, ch. 950, 66 Stat. 798; Pub. L. 98-622, title I, §103, Nov. 8, 1984, 98 Stat. 3384; Pub. L. 104-41, §1, Nov. 1, 1995, 109 Stat. 351; Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §4807(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A-591; Pub. L. 108-453, §2, Dec. 10, 2004, 118 Stat. 3596; Pub. L. 112-29, §§3(c), 20(j), Sept. 16, 2011, 125 Stat. 287, 335.)

HISTORICAL AND REVISION NOTES

There is no provision corresponding to the first sentence explicitly stated in the present statutes, but the refusal of patents by the Patent Office, and the holding of patents invalid by the courts, on the ground of lack of invention or lack of patentable novelty has been followed since at least as early as 1850. This paragraph is added with the view that an explicit statement in the statute may have some stabilizing effect, and also to serve as a basis for the addition at a later time of some criteria which may be worked out.

The second sentence states that patentability as to this requirement is not to be negated by the manner in which the invention was made, that is, it is immaterial whether it resulted from long toil and experimentation or from a flash of genius.

AMENDMENTS

2011—Pub. L. 112-29, §3(c), amended section generally. Prior to amendment, section consisted of subsections. (a) to (c) and related to conditions for patentability; non-obvious subject matter.

Subsecs. (a), (c)(1). Pub. L. 112-29, §20(j), struck out “of this title” after “102”.

2004—Subsec. (c). Pub. L. 108-453 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.”

1999—Subsec. (c). Pub. L. 106-113 substituted “one or more of subsections (e), (f), and (g)” for “subsection (f) or (g)”.

1995—Pub. L. 104-41 designated first and second pars. as subsections. (a) and (c), respectively, and added subsec. (b).

1984—Pub. L. 98-622 inserted “Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.”

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by section 3(c) of Pub. L. 112-29 effective upon the expiration of the 18-month period beginning on Sept. 16, 2011, and applicable to certain applications for patent and any patents issuing thereon, see section 3(n) of Pub. L. 112-29, set out as an Effective Date of 2011 Amendment; Savings Provisions note under section 100 of this title.

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

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-453, § 3, Dec. 10, 2004, 118 Stat. 3596, provided that:

“(a) IN GENERAL.—The amendments made by this Act [amending this section] shall apply to any patent granted on or after the date of the enactment of this Act [Dec. 10, 2004].

“(b) SPECIAL RULE.—The amendments made by this Act shall not affect any final decision of a court or the United States Patent and Trademark Office rendered before the date of the enactment of this Act, and shall not affect the right of any party in any action pending before the United States Patent and Trademark Office or a court on the date of the enactment of this Act to have that party’s rights determined on the basis of the provisions of title 35, United States Code, in effect on the day before the date of the enactment of this Act.”

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, § 4807(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A-591, provided that: “The amendment made by this section [amending this section] shall apply to any application for patent filed on or after the date of the enactment of this Act [Nov. 29, 1999].”

EFFECTIVE DATE OF 1995 AMENDMENT

Pub. L. 104-41, § 3, Nov. 1, 1995, 109 Stat. 352, provided that: “The amendments made by section 1 [amending this section] shall apply to any application for patent filed on or after the date of enactment of this Act [Nov. 1, 1995] and to any application for patent pending on such date of enactment, including (in either case) an application for the reissuance of a patent.”

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-622, title I, § 106, Nov. 8, 1984, 98 Stat. 3385, provided that:

“(a) Subject to subsections (b), (c), (d), and (e) of this section, the amendments made by this Act [probably should be “this title”, meaning title I of Pub. L. 98-622, enacting section 157 of this title, amending this section and sections 116, 120, 135, and 271 of this title, and enacting a provision set out as a note under section 157 of this title] shall apply to all United States patents granted before, on, or after the date of enactment of this Act [Nov. 8, 1984], and to all applications for United States patents pending on or filed after the date of enactment.

“(b) The amendments made by this Act shall not affect any final decision made by the court or the Patent and Trademark Office before the date of enactment of this Act [Nov. 8, 1984], with respect to a patent or application for patent, if no appeal from such decision is pending and the time for filing an appeal has expired.

“(c) Section 271(f) of title 35, United States Code, added by section 101 of this Act shall apply only to the supplying, or causing to be supplied, of any component or components of a patented invention after the date of enactment of this Act [Nov. 8, 1984].

“(d) No United States patent granted before the date of enactment of this Act [Nov. 8, 1984] shall abridge or affect the right of any person or his successors in business who made, purchased, or used prior to such effective

date anything protected by the patent, to continue the use of, or to sell to others to be used or sold, the specific thing so made, purchased, or used, if the patent claims were invalid or otherwise unenforceable on a ground obviated by section 103 or 104 of this Act [amending this section and sections 116 and 120 of this title] and the person made, purchased, or used the specific thing in reasonable reliance on such invalidity or unenforceability. If a person reasonably relied on such invalidity or unenforceability, the court before which such matter is in question may provide for the continued manufacture, use, or sale of the thing made, purchased, or used as specified, or for the manufacture, use, or sale of which substantial preparation was made before the date of enactment of this Act, and it may also provide for the continued practice of any process practiced, or for the practice of which substantial preparation was made, prior to the date of enactment, to the extent and under such terms as the court deems equitable for the protection of investments made or business commenced before the date of enactment.

“(e) The amendments made by this Act shall not affect the right of any party in any case pending in court on the date of enactment [Nov. 8, 1984] to have their rights determined on the basis of the substantive law in effect prior to the date of enactment.”

§ 104. Repealed. Pub. L. 112-29, § 3(d), Sept. 16, 2011, 125 Stat. 287]

Section, act July 19, 1952, ch. 950, 66 Stat. 798; Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 94-131, § 6, Nov. 14, 1975, 89 Stat. 691; Pub. L. 98-622, title IV, § 403(a), Nov. 8, 1984, 98 Stat. 3392; Pub. L. 103-182, title III, § 331, Dec. 8, 1993, 107 Stat. 2113; Pub. L. 103-465, title V, § 531(a), Dec. 8, 1994, 108 Stat. 4982; Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, § 4732(a)(10)(A)], Nov. 29, 1999, 113 Stat. 1536, 1501A-582; Pub. L. 107-273, div. C, title III, § 13206(b)(1)(B), Nov. 2, 2002, 116 Stat. 1906; Pub. L. 112-29, § 20(j), Sept. 16, 2011, 125 Stat. 335, related to inventions made abroad.

EFFECTIVE DATE OF REPEAL

Repeal effective upon the expiration of the 18-month period beginning on Sept. 16, 2011, and applicable to certain applications for patent and any patents issuing thereon, see section 3(n) of Pub. L. 112-29, set out as an Effective Date of 2011 Amendment; Savings Provisions note under section 100 of this title.

§ 105. Inventions in outer space

(a) Any invention made, used or sold in outer space on a space object or component thereof under the jurisdiction or control of the United States shall be considered to be made, used or sold within the United States for the purposes of this title, except with respect to any space object or component thereof that is specifically identified and otherwise provided for by an international agreement to which the United States is a party, or with respect to any space object or component thereof that is carried on the registry of a foreign state in accordance with the Convention on Registration of Objects Launched into Outer Space.

(b) Any invention made, used or sold in outer space on a space object or component thereof that is carried on the registry of a foreign state in accordance with the Convention on Registration of Objects Launched into Outer Space, shall be considered to be made, used or sold within the United States for the purposes of this title if specifically so agreed in an international agreement between the United States and the state of registry.

(Added Pub. L. 101-580, § 1(a), Nov. 15, 1990, 104 Stat. 2863.)