

the median household income for that preceding calendar year, as most recently reported by the Bureau of the Census.

(b) **APPLICATIONS RESULTING FROM PRIOR EMPLOYMENT.**—An applicant is not considered to be named on a previously filed application for purposes of subsection (a)(2) if the applicant has assigned, or is under an obligation by contract or law to assign, all ownership rights in the application as the result of the applicant's previous employment.

(c) **FOREIGN CURRENCY EXCHANGE RATE.**—If an applicant's or entity's gross income in the preceding calendar year is not in United States dollars, the average currency exchange rate, as reported by the Internal Revenue Service, during that calendar year shall be used to determine whether the applicant's or entity's gross income exceeds the threshold specified in paragraphs<sup>1</sup> (3) or (4) of subsection (a).

(d) **INSTITUTIONS OF HIGHER EDUCATION.**—For purposes of this section, a micro entity shall include an applicant who certifies that—

(1) the applicant's employer, from which the applicant obtains the majority of the applicant's income, is an institution of higher education as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)); or

(2) the applicant has assigned, granted, conveyed, or is under an obligation by contract or law, to assign, grant, or convey, a license or other ownership interest in the particular applications to such an institution of higher education.

(e) **DIRECTOR'S AUTHORITY.**—In addition to the limits imposed by this section, the Director may, in the Director's discretion, impose income limits, annual filing limits, or other limits on who may qualify as a micro entity pursuant to this section if the Director determines that such additional limits are reasonably necessary to avoid an undue impact on other patent applicants or owners or are otherwise reasonably necessary and appropriate. At least 3 months before any limits proposed to be imposed pursuant to this subsection take effect, the Director shall inform the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate of any such proposed limits.

(Added and amended Pub. L. 112-29, §§10(g)(1), 20(j), Sept. 16, 2011, 125 Stat. 318, 335; Pub. L. 112-274, §1(m), Jan. 14, 2013, 126 Stat. 2459.)

#### REFERENCES IN TEXT

Section 61(a) of the Internal Revenue Code of 1986, referred to in subsec. (a)(3), (4), is classified to section 61(a) of Title 26, Internal Revenue Code.

#### AMENDMENTS

2013—Subsec. (a). Pub. L. 112-274 inserted “of this title” after “For purposes” in introductory provisions.

2011—Subsec. (a). Pub. L. 112-29, §20(j), struck out “of this title” after “For purposes” in introductory provisions.

#### EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112-274 effective Jan. 14, 2013, and applicable to proceedings commenced on or after

<sup>1</sup> So in original. Probably should be “paragraph”.

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

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

Section effective on Sept. 16, 2011, see section 10(i)(1) of Pub. L. 112-29, set out as a Fee Setting Authority note under section 41 of this title.

### CHAPTER 12—EXAMINATION OF APPLICATION

Sec. 131.	Examination of application.
132.	Notice of rejection; reexamination.
133.	Time for prosecuting application.
134.	Appeal to the Patent Trial and Appeal Board.
135.	Derivation proceedings.

#### AMENDMENTS

2011—Pub. L. 112-29, §3(j)(5), Sept. 16, 2011, 125 Stat. 291, amended items 134 and 135 generally, substituting “Appeal to the Patent Trial and Appeal Board” for “Appeal to the Board of Patent Appeals and Interferences” in item 134 and “Derivation proceedings” for “Interferences” in item 135.

1984—Pub. L. 98-622, title II, §204(b)(2), Nov. 8, 1984, 98 Stat. 3388, substituted “Patent Appeals and Interferences” for “Appeals” in item 134.

#### § 131. Examination of application

The Director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor.

(July 19, 1952, ch. 950, 66 Stat. 801; 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.)

#### HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §36 (R.S. 4893).

The first part is revised in language and amplified. The phrase “and that the invention is sufficiently useful and important” is omitted as unnecessary, the requirements for patentability being stated in sections 101, 102 and 103.

#### AMENDMENTS

2002—Pub. L. 107-273 made technical correction to directory language of Pub. L. 106-113. See 1999 Amendment note below.

1999—Pub. L. 106-113, as amended by Pub. L. 107-273, substituted “Director” for “Commissioner” in two places.

#### 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 this title.

#### § 132. Notice of rejection; reexamination

(a) Whenever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director shall notify the appli-

cant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application; and if after receiving such notice, the applicant persists in his claim for a patent, with or without amendment, the application shall be reexamined. No amendment shall introduce new matter into the disclosure of the invention.

(b) The Director shall prescribe regulations to provide for the continued examination of applications for patent at the request of the applicant. The Director may establish appropriate fees for such continued examination and shall provide a 50 percent reduction in such fees for small entities that qualify for reduced fees under section 41(h)(1).

(July 19, 1952, ch. 950, 66 Stat. 801; Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §§4403, 4732(a)(10)(A)], Nov. 29, 1999, 113 Stat. 1536, 1501A-560, 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.)

#### HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §51 (R.S. 4903, amended Aug. 5, 1939, ch. 452, §1, 53 Stat. 1213).

The first paragraph of the corresponding section of existing statute is revised in language and amplified to incorporate present practice; the second paragraph of the existing statute is placed in section 135.

The last sentence relating to new matter is added but represents no departure from present practice.

#### AMENDMENTS

2011—Subsec. (b). Pub. L. 112-29 struck out “of this title” after “41(h)(1)”.

2002—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 note below.

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

Pub. L. 106-113, §1000(a)(9) [title IV, §4403], designated existing provisions as subsec. (a) and added subsec. (b).

#### 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, see section 20(l) of Pub. L. 112-29, set out as a note under section 2 of this title.

#### EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §4405(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A-560, provided that: “The amendments made by section 4403 [amending this section]—

“(1) shall take effect on the date that is 6 months after the date of the enactment of this Act [Nov. 29, 1999], and shall apply to all applications filed under section 111(a) of title 35, United States Code, on or after June 8, 1995, and all applications complying with section 371 of title 35, United States Code, that resulted from international applications filed on or after June 8, 1995; and

“(2) do not apply to applications for design patents under chapter 16 of title 35, United States Code.”

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.

### § 133. Time for prosecuting application

Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Director in such action, the application shall be regarded as abandoned by the parties thereto.

(July 19, 1952, ch. 950, 66 Stat. 801; 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. 112-211, title II, §202(b)(5), Dec. 18, 2012, 126 Stat. 1536.)

#### HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §37 (R.S. 4894, amended (1) Mar. 3, 1897, ch. 391, §4, 29 Stat. 692, 693, (2) July 6, 1916, ch. 225, §1, 39 Stat. 345, 347-8, (3) Mar. 2, 1927, ch. 273, §1, 44 Stat. 1335, (4) Aug. 7, 1939, ch. 568, 53 Stat. 1264).

The opening clause of the corresponding section of existing statute is omitted as having no present day meaning or value and the last two sentences are omitted for inclusion in section 267. The notice is stated as given or mailed. Language is revised.

#### AMENDMENTS

2012—Pub. L. 112-211 struck out “, unless it be shown to the satisfaction of the Director that such delay was unavoidable” before period at end.

2002—Pub. L. 107-273 made technical correction to directory language of Pub. L. 106-113. See 1999 Amendment note below.

1999—Pub. L. 106-113, as amended by Pub. L. 107-273, substituted “Director” for “Commissioner” in two places.

#### EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112-211 effective on the date that is 1 year after Dec. 18, 2012, applicable to patents issued before, on, or after that effective date and patent applications pending on or filed after that effective date, and not effective with respect to patents in litigation commenced before that 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 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 this title.

### § 134. Appeal to the Patent Trial and Appeal Board

(a) PATENT APPLICANT.—An applicant for a patent, any of whose claims has been twice rejected, may appeal from the decision of the primary examiner to the Patent Trial and Appeal Board, having once paid the fee for such appeal.

(b) PATENT OWNER.—A patent owner in a reexamination may appeal from the final rejection of any claim by the primary examiner to the Patent Trial and Appeal Board, having once paid the fee for such appeal.

(July 19, 1952, ch. 950, 66 Stat. 801; Pub. L. 98-622, title II, §204(b)(1), Nov. 8, 1984, 98 Stat. 3388; Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §4605(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A-570; Pub. L. 107-273, div. C, title III, §§13106(b), 13202(b)(1), Nov. 2, 2002, 116 Stat. 1901; Pub. L. 112-29, §§3(j)(1), (3), 7(b), Sept. 16, 2011, 125 Stat. 290, 313.)