

1999—Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §4732(a)(10)(A)], Nov. 29, 1999, 113 Stat. 1536, 1501A-582, as amended by Pub. L. 107-273, div. C, title III, §13206(b)(1)(B), Nov. 2, 2002, 116 Stat. 1906, substituted “Director” for “Commissioner” in item 304.

Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §§4602, 4732(a)(9)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A-567, 1501A-582, inserted “EX PARTE” before “REEXAMINATION” in chapter heading and substituted “Director” for “Commissioner” in item 303.

§ 301. Citation of prior art and written statements

(a) IN GENERAL.—Any person at any time may cite to the Office in writing—

(1) prior art consisting of patents or printed publications which that person believes to have a bearing on the patentability of any claim of a particular patent; or

(2) statements of the patent owner filed in a proceeding before a Federal court or the Office in which the patent owner took a position on the scope of any claim of a particular patent.

(b) OFFICIAL FILE.—If the person citing prior art or written statements pursuant to subsection (a) explains in writing the pertinence and manner of applying the prior art or written statements to at least 1 claim of the patent, the citation of the prior art or written statements and the explanation thereof shall become a part of the official file of the patent.

(c) ADDITIONAL INFORMATION.—A party that submits a written statement pursuant to subsection (a)(2) shall include any other documents, pleadings, or evidence from the proceeding in which the statement was filed that addresses the written statement.

(d) LIMITATIONS.—A written statement submitted pursuant to subsection (a)(2), and additional information submitted pursuant to subsection (c), shall not be considered by the Office for any purpose other than to determine the proper meaning of a patent claim in a proceeding that is ordered or instituted pursuant to section 304, 314, or 324. If any such written statement or additional information is subject to an applicable protective order, such statement or information shall be redacted to exclude information that is subject to that order.

(e) CONFIDENTIALITY.—Upon the written request of the person citing prior art or written statements pursuant to subsection (a), that person’s identity shall be excluded from the patent file and kept confidential.

(Added Pub. L. 96-517, §1, Dec. 12, 1980, 94 Stat. 3015; amended Pub. L. 112-29, §6(g)(1), Sept. 16, 2011, 125 Stat. 311.)

AMENDMENTS

2011—Pub. L. 112-29 amended section generally. Prior to amendment, text read as follows: “Any person at any time may cite to the Office in writing prior art consisting of patents or printed publications which that person believes to have a bearing on the patentability of any claim of a particular patent. If the person explains in writing the pertinency and manner of applying such prior art to at least one claim of the patent, the citation of such prior art and the explanation thereof will become a part of the official file of the patent. At the written request of the person citing the prior art, his or her identity will be excluded from the patent file and kept confidential.”

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112-29, §6(g)(3), Sept. 16, 2011, 125 Stat. 312, provided that: “The amendments made by this subsection [amending this section] shall take effect upon the expiration of the 1-year period beginning on the date of the enactment of this Act [Sept. 16, 2011] and shall apply to any patent issued before, on, or after that effective date.”

EFFECTIVE DATE

Section effective July 1, 1981, and applicable to patents in force as of July 1, 1981, or issued thereafter, see section 8(b) of Pub. L. 96-517, set out as an Effective Date of 1980 Amendment note under section 41 of this title.

§ 302. Request for reexamination

Any person at any time may file a request for reexamination by the Office of any claim of a patent on the basis of any prior art cited under the provisions of section 301. The request must be in writing and must be accompanied by payment of a reexamination fee established by the Director pursuant to the provisions of section 41. The request must set forth the pertinency and manner of applying cited prior art to every claim for which reexamination is requested. Unless the requesting person is the owner of the patent, the Director promptly will send a copy of the request to the owner of record of the patent.

(Added Pub. L. 96-517, §1, Dec. 12, 1980, 94 Stat. 3015; amended Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §4732(a)(8), (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.)

AMENDMENTS

2011—Pub. L. 112-29 struck out “of this title” after “301” and after “41”.

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 promptly” for “Commissioner promptly”.

Pub. L. 106-113, §1000(a)(9) [title IV, §4732(a)(8)], substituted “Director pursuant” for “Commissioner of Patents pursuant”.

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

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.

EFFECTIVE DATE

Section effective July 1, 1981, and applicable to patents in force as of July 1, 1981, or issued thereafter, see section 8(b) of Pub. L. 96-517, set out as an Effective Date of 1980 Amendment note under section 41 of this title.

§ 303. Determination of issue by Director

(a) Within three months following the filing of a request for reexamination under the provi-

sions of section 302, the Director will determine whether a substantial new question of patentability affecting any claim of the patent concerned is raised by the request, with or without consideration of other patents or printed publications. On his own initiative, and any time, the Director may determine whether a substantial new question of patentability is raised by patents and publications discovered by him or cited under the provisions of section 301 or 302. The existence of a substantial new question of patentability is not precluded by the fact that a patent or printed publication was previously cited by or to the Office or considered by the Office.

(b) A record of the Director's determination under subsection (a) of this section will be placed in the official file of the patent, and a copy promptly will be given or mailed to the owner of record of the patent and to the person requesting reexamination, if any.

(c) A determination by the Director pursuant to subsection (a) of this section that no substantial new question of patentability has been raised will be final and nonappealable. Upon such a determination, the Director may refund a portion of the reexamination fee required under section 302.

(Added Pub. L. 96-517, §1, Dec. 12, 1980, 94 Stat. 3015; amended Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §4732(a)(9)(A), (10)(A)], Nov. 29, 1999, 113 Stat. 1536, 1501A-582; Pub. L. 107-273, div. C, title III, §§13105(a), 13206(b)(1), Nov. 2, 2002, 116 Stat. 1900, 1905, 1906; Pub. L. 112-29, §§6(h)(1)(A), 20(j), Sept. 16, 2011, 125 Stat. 312, 335.)

AMENDMENTS

2011—Subsec. (a). Pub. L. 112-29, §20(j), struck out “of this title” after “section 302”.

Pub. L. 112-29, §6(h)(1)(A), substituted “section 301 or 302” for “section 301 of this title”.

Subsec. (c). Pub. L. 112-29, §20(j), struck out “of this title” after “section 302”.

2002—Subsec. (a). Pub. L. 107-273, §13206(b)(1)(B), 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.

Pub. L. 107-273, §13105(a), inserted at end “The existence of a substantial new question of patentability is not precluded by the fact that a patent or printed publication was previously cited by or to the Office or considered by the Office.”

Subsec. (b). Pub. L. 107-273, §13206(b)(1)(A), made technical correction to directory language of Pub. L. 106-113, §1000(a)(9) [title IV, §4732(a)(9)(A)(ii)]. See 1999 Amendment note below.

Subsec. (c). Pub. L. 107-273, §13206(b)(1)(B), 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)(9)(A)(i)], substituted “Director” for “Commissioner” in section catchline.

Subsec. (a). Pub. L. 106-113, §1000(a)(9) [title IV, §4732(a)(10)(A)], as amended by Pub. L. 107-273, §13206(b)(1)(B), substituted “Director” for “Commissioner” in two places.

Subsec. (b). Pub. L. 106-113, §1000(a)(9) [title IV, §4732(a)(9)(A)(ii)], as amended by Pub. L. 107-273, §13206(b)(1)(A), substituted “Director’s” for “Commissioner’s”.

Subsec. (c). Pub. L. 106-113, §1000(a)(9) [title IV, §4732(a)(10)(A)], as amended by Pub. L. 107-273, §13206(b)(1)(B), substituted “Director” for “Commissioner” in two places.

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112-29, §6(h)(1)(B), Sept. 16, 2011, 125 Stat. 312, provided that: “The amendment made by this paragraph [amending this section] shall take effect upon the expiration of the 1-year period beginning on the date of the enactment of this Act [Sept. 16, 2011] and shall apply to any patent issued before, on, or after that effective date.”

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 2002 AMENDMENT

Pub. L. 107-273, div. C, title III, §13105(b), Nov. 2, 2002, 116 Stat. 1900, provided that: “The amendments made by this section [amending this section and section 312 of this title] shall apply with respect to any determination of the Director of the United States Patent and Trademark Office that is made under section 303(a) or [former section] 312(a) [see section 314(a)] of title 35, United States Code, on or after the date of enactment of this Act [Nov. 2, 2002].”

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.

EFFECTIVE DATE

Section effective July 1, 1981, and applicable to patents in force as of July 1, 1981, or issued thereafter, see section 8(b) of Pub. L. 96-517, set out as an Effective Date of 1980 Amendment note under section 41 of this title.

§ 304. Reexamination order by Director

If, in a determination made under the provisions of subsection 303(a), the Director finds that a substantial new question of patentability affecting any claim of a patent is raised, the determination will include an order for reexamination of the patent for resolution of the question. The patent owner will be given a reasonable period, not less than two months from the date a copy of the determination is given or mailed to him, within which he may file a statement on such question, including any amendment to his patent and new claim or claims he may wish to propose, for consideration in the reexamination. If the patent owner files such a statement, he promptly will serve a copy of it on the person who has requested reexamination under the provisions of section 302. Within a period of two months from the date of service, that person may file and have considered in the reexamination a reply to any statement filed by the patent owner. That person promptly will serve on the patent owner a copy of any reply filed.

(Added Pub. L. 96-517, §1, Dec. 12, 1980, 94 Stat. 3016; amended 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.)

AMENDMENTS

2011—Pub. L. 112-29 struck out “of this title” after “303(a)” and after “302”.

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