

States is withdrawn or considered withdrawn, either generally or as to the United States, under the conditions of the treaty and the Regulations, before the applicant has complied with the applicable requirements prescribed by section 371(c) of this part, the designation of the United States shall have no effect after the date of withdrawal, and shall be considered as not having been made, unless a claim for benefit of a prior filing date under section 365(c) of this section¹ was made in a national application, or an international application designating the United States, or a claim for benefit under section 386(c) was made in an international design application designating the United States, filed before the date of such withdrawal. However, such withdrawn international application may serve as the basis for a claim of priority under section 365(a) and (b), or under section 386(a) or (b), if it designated a country other than the United States.

(Added Pub. L. 94-131, §1, Nov. 14, 1975, 89 Stat. 687; amended Pub. L. 98-622, title IV, §401(b), Nov. 8, 1984, 98 Stat. 3391; Pub. L. 112-211, title I, §102(9), Dec. 18, 2012, 126 Stat. 1532.)

AMENDMENTS

2012—Pub. L. 112-211 substituted “unless a claim for benefit of a prior filing date under section 365(c) of this section was made in a national application, or an international application designating the United States, or a claim for benefit under section 386(c) was made in an international design application designating the United States, filed before the date of such withdrawal.” for “unless a claim for the benefit of a prior filing date under section 365(c) of this part was made in a national application, or an international application designating the United States, filed before the date of such withdrawal.” and “However, such withdrawn international application may serve as the basis for a claim of priority under section 365(a) and (b), or under section 386(a) or (b), if it designated a country other than the United States.” for “However, such withdrawn international application may serve as the basis for a claim of priority under section 365(a) and (b) of this part, if it designated a country other than the United States.”

1984—Pub. L. 98-622 inserted “after the date of withdrawal,” after “effect” and “, unless a claim for the benefit of a prior filing date under section 365(c) of this part was made in a national application, or an international application designating the United States, filed before the date of such withdrawal” after “having been made” in first sentence, and inserted “withdrawn” after “such” in second sentence.

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112-211 effective on the later of the date that is 1 year after Dec. 18, 2012, or the date that the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs enters into force with respect to the United States (May 13, 2015), and applicable only to certain applications filed on and after that effective date and patents issuing thereon, see section 103 of Pub. L. 112-211, set out as a note under section 100 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-622 effective six months after Nov. 8, 1984, see section 406(b) of Pub. L. 98-622, set out as a note under section 3 of this title.

EFFECTIVE DATE

Section effective Jan. 24, 1978, and applicable to international and national applications filed on and

after that date, see section 11 of Pub. L. 94-131, set out as a note under section 351 of this title.

§ 367. Actions of other authorities: Review

(a) Where a Receiving Office other than the Patent and Trademark Office has refused to accord an international filing date to an international application designating the United States or where it has held such application to be withdrawn either generally or as to the United States, the applicant may request review of the matter by the Director, on compliance with the requirements of and within the time limits specified by the treaty and the Regulations. Such review may result in a determination that such application be considered as pending in the national stage.

(b) The review under subsection (a) of this section, subject to the same requirements and conditions, may also be requested in those instances where an international application designating the United States is considered withdrawn due to a finding by the International Bureau under article 12(3) of the treaty.

(Added Pub. L. 94-131, §1, Nov. 14, 1975, 89 Stat. 687; amended Pub. L. 98-622, title IV, §403(a), Nov. 8, 1984, 98 Stat. 3392; 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.)

AMENDMENTS

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

1999—Subsec. (a). Pub. L. 106-113, as amended by Pub. L. 107-273, substituted “Director” for “Commissioner”.

1984—Subsec. (a). Pub. L. 98-622 substituted “Patent and Trademark Office” for “Patent Office”.

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 OF 1984 AMENDMENT

Amendment by Pub. L. 98-622 effective Nov. 8, 1984, see section 406(a) of Pub. L. 98-622, set out as a note under section 351 of this title.

EFFECTIVE DATE

Section effective Jan. 24, 1978, and applicable to international and national applications filed on and after that date, see section 11 of Pub. L. 94-131, set out as a note under section 351 of this title.

§ 368. Secrecy of certain inventions; filing international applications in foreign countries

(a) International applications filed in the Patent and Trademark Office shall be subject to the provisions of chapter 17.

(b) In accordance with article 27(8) of the treaty, the filing of an international application in a country other than the United States on the invention made in this country shall be considered to constitute the filing of an application in a foreign country within the meaning of chapter 17, whether or not the United States is designated in that international application.

(c) If a license to file in a foreign country is refused or if an international application is or-

¹ So in original.

dered to be kept secret and a permit refused, the Patent and Trademark Office when acting as a Receiving Office, International Searching Authority, or International Preliminary Examining Authority, may not disclose the contents of such application to anyone not authorized to receive such disclosure.

(Added Pub. L. 94-131, §1, Nov. 14, 1975, 89 Stat. 687; amended Pub. L. 98-622, title IV, §403(a), Nov. 8, 1984, 98 Stat. 3392; Pub. L. 99-616, §6, Nov. 6, 1986, 100 Stat. 3486; Pub. L. 112-29, §20(j), Sept. 16, 2011, 125 Stat. 335.)

AMENDMENTS

2011—Subsecs. (a), (b). Pub. L. 112-29 struck out “of this title” after “17”.

1986—Subsec. (c). Pub. L. 99-616 substituted a comma for “or” after “Receiving Office” and “International Preliminary Examining Authority” for “both”.

1984—Subsecs. (a), (c). Pub. L. 98-622 substituted “Patent and Trademark Office” for “Patent Office”.

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 1986 AMENDMENT

Amendment by Pub. L. 99-616 effective July 1, 1987, and applicable to all international applications pending before or after that date, see section 9 of Pub. L. 99-616, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-622 effective Nov. 8, 1984, see section 406(a) of Pub. L. 98-622, set out as a note under section 351 of this title.

EFFECTIVE DATE

Section effective Jan. 24, 1978, and applicable to international and national applications filed on and after that date, see section 11 of Pub. L. 94-131, set out as a note under section 351 of this title.

CHAPTER 37—NATIONAL STAGE

| | |
|-------|---|
| Sec. | |
| 371. | National stage: Commencement. |
| 372. | National stage: Requirements and procedure. |
| [373. | Repealed.] |
| 374. | Publication of international application. |
| 375. | Patent issued on international application: Effect. |
| 376. | Fees. |

AMENDMENTS

2013—Pub. L. 112-274, §1(i), Jan. 14, 2013, 126 Stat. 2457, struck out item 373 “Improper applicant”.

1999—Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §4507(12)], as added by Pub. L. 107-273, div. C, title III, §13205(2)(F), Nov. 2, 2002, 116 Stat. 1903, substituted “Publication of international application” for “Publication of international application: Effect” in item 374.

§ 371. National stage: Commencement

(a) Receipt from the International Bureau of copies of international applications with any amendments to the claims, international search reports, and international preliminary examination reports including any annexes thereto may be required in the case of international applications designating or electing the United States.

(b) Subject to subsection (f) of this section, the national stage shall commence with the ex-

piration of the applicable time limit under article 22(1) or (2), or under article 39(1)(a) of the treaty.

(c) The applicant shall file in the Patent and Trademark Office—

(1) the national fee provided in section 41(a);

(2) a copy of the international application, unless not required under subsection (a) of this section or already communicated by the International Bureau, and a translation into the English language of the international application, if it was filed in another language;

(3) amendments, if any, to the claims in the international application, made under article 19 of the treaty, unless such amendments have been communicated to the Patent and Trademark Office by the International Bureau, and a translation into the English language if such amendments were made in another language;

(4) an oath or declaration of the inventor (or other person authorized under chapter 11) complying with the requirements of section 115 and with regulations prescribed for oaths or declarations of applicants;

(5) a translation into the English language of any annexes to the international preliminary examination report, if such annexes were made in another language.

(d) The requirements with respect to the national fee referred to in subsection (c)(1), the translation referred to in subsection (c)(2), and the oath or declaration referred to in subsection (c)(4) of this section shall be complied with by the date of the commencement of the national stage or by such later time as may be fixed by the Director. The copy of the international application referred to in subsection (c)(2) shall be submitted by the date of the commencement of the national stage. Failure to comply with these requirements shall be regarded as abandonment of the application by the parties thereof. The payment of a surcharge may be required as a condition of accepting the national fee referred to in subsection (c)(1) or the oath or declaration referred to in subsection (c)(4) of this section if these requirements are not met by the date of the commencement of the national stage. The requirements of subsection (c)(3) of this section shall be complied with by the date of the commencement of the national stage, and failure to do so shall be regarded as a cancellation of the amendments to the claims in the international application made under article 19 of the treaty. The requirement of subsection (c)(5) shall be complied with at such time as may be fixed by the Director and failure to do so shall be regarded as cancellation of the amendments made under article 34(2)(b) of the treaty.

(e) After an international application has entered the national stage, no patent may be granted or refused thereon before the expiration of the applicable time limit under article 28 or article 41 of the treaty, except with the express consent of the applicant. The applicant may present amendments to the specification, claims and drawings of the application after the national stage has commenced.

(f) At the express request of the applicant, the national stage of processing may be commenced at any time at which the application is in order for such purpose and the applicable require-