

2093, 2111, 2133 or 2134 of this title, or a permit or lease under section 2097 of this title;

(2) to whom such license, permit, or lease has been issued by the Commission;

(3) who is authorized to conduct such activities as such applicant is conducting or proposes to conduct under a general license issued by the Commission under sections 2092 or 2111 of this title; or

(4) whose activities or proposed activities are authorized under section 2051 of this title,

may at any time make application to the Commission for a patent license for the use of an invention or discovery useful in the production or utilization of special nuclear material or atomic energy covered by a patent. Each such application shall set forth the nature and purpose of the use which the applicant intends to make of the patent license, the steps taken by the applicant to obtain a patent license from the owner of the patent, and a statement of the effects, as estimated by the applicant, on the authorized activities which will result from failure to obtain such patent license and which will result from the granting of such patent license.

#### (d) Hearings

Whenever any person has made an application to the Commission for a patent license pursuant to subsection (c)—

(1) the Commission, within 30 days after the filing of such application, shall make available to the owner of the patent all of the information contained in such application, and shall notify the owner of the patent of the time and place at which a hearing will be held by the Commission;

(2) the Commission shall hold a hearing within 60 days after the filing of such application at a time and place designated by the Commission; and

(3) in the event an applicant applies for two or more patent licenses, the Commission may, in its discretion, order the consolidation of such applications, and if the patents are owned by more than one owner, such owners may be made parties to one hearing.

#### (e) Commission's findings

If, after any hearing conducted pursuant to subsection (d), the Commission finds that—

(1) the invention or discovery covered by the patent is of primary importance in the production or utilization of special nuclear material or atomic energy;

(2) the licensing of such invention or discovery is of primary importance to the conduct of the activities of the applicant;

(3) the activities to which the patent license are proposed to be applied by such applicant are of primary importance to the furtherance of policies and purposes of this chapter; and

(4) such applicant cannot otherwise obtain a patent license from the owner of the patent on terms which the Commission deems to be reasonable for the intended use of the patent to be made by such applicant,

the Commission shall license the applicant to use the invention or discovery covered by the patent for the purposes stated in such application on terms deemed equitable by the Commis-

sion and generally not less fair than those granted by the patentee or by the Commission to similar licensees for comparable use.

#### (f) Limitations on issuance of patent

The Commission shall not grant any patent license pursuant to subsection (e) for any other purpose than that stated in the application. Nor shall the Commission grant any patent license to any other applicant for a patent license on the same patent without an application being made by such applicant pursuant to subsection (c), and without separate notification and hearing as provided in subsection (d), and without a separate finding as provided in subsection (e).

#### (g) Royalty fees

The owner of the patent affected by a declaration or a finding made by the Commission pursuant to subsection (b) or (e) shall be entitled to a reasonable royalty fee from the licensee for any use of an invention or discovery licensed by this section. Such royalty fee may be agreed upon by such owner and the patent licensee, or in the absence of such agreement shall be determined for each patent license by the Commission pursuant to section 2187(c) of this title.

#### (h) Effective period

The provisions of this section shall apply to any patent the application for which shall have been filed before September 1, 1979.

(Aug. 1, 1946, ch. 724, title I, § 153, as added Aug. 20, 1954, ch. 1073, § 1, 68 Stat. 945; amended Pub. L. 86-50, § 114, June 23, 1959, 73 Stat. 87; Pub. L. 88-394, § 1, Aug. 1, 1964, 78 Stat. 376; Pub. L. 91-161, § 1, Dec. 24, 1969, 83 Stat. 444; Pub. L. 93-377, § 6, Aug. 17, 1974, 88 Stat. 475; renumbered title I, Pub. L. 102-486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

#### REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (b), and (e)(3), was in the original "this Act", meaning act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 919, known as the Atomic Energy Act of 1954, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

#### PRIOR PROVISIONS

Provisions similar to this section were contained in section 1811(c)(1), (2) of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

#### AMENDMENTS

1974—Subsec. (h). Pub. L. 93-377 substituted "September 1, 1979" for "September 1, 1974".

1969—Subsec. (h). Pub. L. 91-161 substituted "September 1, 1974" for "September 1, 1969".

1964—Subsec. (h). Pub. L. 88-394 substituted "September 1, 1969" for "September 1, 1964".

1959—Subsec. (h). Pub. L. 86-50 substituted "September 1, 1964" for "September 1, 1959".

#### § 2184. Injunctions; measure of damages

No court shall have jurisdiction or power to stay, restrain, or otherwise enjoin the use of any invention or discovery by a patent licensee, to the extent that such use is licensed by section 2183(b) or 2183(e) of this title. If, in any action

against such patent licensee, the court shall determine that the defendant is exercising such license, the measure of damages shall be the royalty fee determined pursuant to section 2187(c) of this title, together with such costs, interest, and reasonable attorney's fees as may be fixed by the court. If no royalty fee has been determined, the court shall stay the proceeding until the royalty fee is determined pursuant to section 2187(c) of this title. If any such patent licensee shall fail to pay such royalty fee, the patentee may bring an action in any court of competent jurisdiction for such royalty fee, together with such costs, interest, and reasonable attorney's fees as may be fixed by the court.

(Aug. 1, 1946, ch. 724, title I, §154, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 946; renumbered title I, Pub. L. 102-486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

#### PRIOR PROVISIONS

Provisions similar to this section were contained in section 1811(c)(3) of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

#### § 2185. Prior art

In connection with applications for patents covered by this subchapter, the fact that the invention or discovery was known or used before shall be a bar to the patenting of such invention or discovery even though such prior knowledge or use was under secrecy within the atomic energy program of the United States.

(Aug. 1, 1946, ch. 724, title I, §155, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 947; renumbered title I, Pub. L. 102-486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

#### TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See, also, notes set out under those sections.

#### § 2186. Commission patent licenses

The Commission shall establish standard specifications upon which it may grant a patent license to use any patent declared to be affected with the public interest pursuant to section 2183(a) of this title. Such a patent license shall not waive any of the other provisions of this chapter.

(Aug. 1, 1946, ch. 724, title I, §156, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 947; amended Pub. L. 96-517, §7(a), Dec. 12, 1980, 94 Stat. 3027; renumbered title I, Pub. L. 102-486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

#### REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 919, known as the Atomic Energy Act of 1954, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

#### AMENDMENTS

1980—Pub. L. 96-517 substituted "patent declared to be affected" for "patent held by the Commission or declared to be affected".

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-517 effective July 1, 1981, but implementing regulations authorized to be issued earlier, see section 8(f) of Pub. L. 96-517, set out as a note under section 41 of Title 35, Patents.

#### TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See, also, notes set out under those sections.

#### § 2187. Compensation, awards, and royalties

##### (a) Patent Compensation Board

The Commission shall designate a Patent Compensation Board to consider applications under this section. The members of the Board shall receive a per diem compensation for each day spent in meetings or conferences, and all members shall receive their necessary traveling or other expenses while engaged in the work of the Board. The members of the Board may serve as such without regard to the provisions of sections 281, 283, or 284<sup>1</sup> of title 18, except in so far as such sections may prohibit any such member from receiving compensation in respect of any particular matter which directly involves the Commission or in which the Commission is directly interested.

##### (b) Eligibility

(1) Any owner of a patent licensed under section 2188 or 2183(b) or 2183(e) of this title, or any patent licensee thereunder may make application to the Commission for the determination of a reasonable royalty fee in accordance with such procedures as the Commission by regulation may establish.

(2) Any person seeking to obtain the just compensation provided in section 2181 of this title shall make application therefor to the Commission in accordance with such procedures as the Commission may by regulation establish.

(3) Any person making any invention or discovery useful in the production or utilization of special nuclear material or atomic energy, who is not entitled to compensation or a royalty therefor under this chapter and who has complied with the provisions of section 2181(c) of this title may make application to the Commission for, and the Commission may grant, an award. The Commission may also, after consultation with the General Advisory Committee, and with the approval of the President, grant an award for any especially meritorious contribution to the development, use, or control of atomic energy.

##### (c) Standards

(1) In determining a reasonable royalty fee as provided for in section 2183(b) or 2183(e) of this title, the Commission shall take into consideration (A) the advice of the Patent Compensation Board; (B) any defense, general or special, that might be pleaded by a defendant in an action for infringement; (C) the extent to which, if any, such patent was developed through federally financed research; and (D) the degree of utility, novelty, and importance of the invention or discovery, and may consider the cost to the owner

<sup>1</sup> See References in Text note below.