

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-247 effective Aug. 27, 1982, see section 17(a) of Pub. L. 97-247, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Pub. L. 93-601, §4(b), Jan. 2, 1975, 88 Stat. 1957, provided that: "This Act [amending this section and sections 7 and 151 of this title and enacting provisions set out as a note under section 151 of this title] shall be effective upon enactment [Jan. 2, 1975]. Examiners-in-chief in office on the date of enactment shall continue in office under and in accordance with their then existing appointments."

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-426 effective on first day of first pay period which begins on or after July 1, 1964, except to the extent provided in section 501(c) of Pub. L. 88-426, see section 501 of Pub. L. 88-426.

EFFECTIVE DATE OF 1959 AMENDMENT

Pub. L. 86-370, §7(b), Sept. 23, 1959, 73 Stat. 653, provided that: "Sections 1 [amending this section, section 7 of this title, and provisions set out as a note below], 3 [amending sections 2205 and 2208 of former Title 5, Executive Departments and Government Officers and Employees], and 6 [amending section 1082 of former Title 5 and section 903 of Title 20, Education] of this Act shall become effective on the first day of the first pay period which begins after the date of enactment of this Act [Sept. 23, 1959]." Such section 7(b) was repealed by Pub. L. 89-554, §8(a), Sept. 6, 1966, 80 Stat. 660.

EXISTING POSITIONS, COMPENSATION, AND APPOINTMENTS UNAFFECTED BY PUB. L. 86-370 UNTIL ACTION TAKEN UNDER AMENDMENTS

Pub. L. 86-370, §1(c), Sept. 23, 1959, 73 Stat. 650, provided that: "The amendments made by this section [amending sections 1 and 7 of this title] shall not affect—

"(1) any position of examiner-in-chief or designated examiner-in-chief existing immediately prior to the effective date of this section [see Effective Date of 1959 Amendment note set out above], or

"(2) any incumbent of any such position, his appointment thereto, his rate of compensation, or his right to receive such compensation, until appropriate action is taken under authority of such amendments."

§ 4. Restrictions on officers and employees as to interest in patents

Officers and employees of the Patent and Trademark Office shall be incapable, during the period of their appointments and for one year thereafter, of applying for a patent and of acquiring, directly or indirectly, except by inheritance or bequest, any patent or any right or interest in any patent, issued or to be issued by the Office. In patents applied for thereafter they shall not be entitled to any priority date earlier than one year after the termination of their appointment.

(July 19, 1952, ch. 950, 66 Stat. 793; Pub. L. 93-596, §1, Jan. 2, 1975, 88 Stat. 1949.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §4 (R.S. 480).

The language is revised and inability to apply for a patent, included in the original language, is made explicit.

The period of disability is increased to include one year after leaving the Office.

The further restriction, that no priority date earlier than one year after leaving the Office can be claimed, is added.

The one year period is made inapplicable to applications which may be pending when the revised title goes into effect by section 4(g) of the bill.

AMENDMENTS

1975—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of Title 15, Commerce and Trade.

§ 5. Patent and Trademark Office Public Advisory Committees**(a) ESTABLISHMENT OF PUBLIC ADVISORY COMMITTEES.—**

(1) APPOINTMENT.—The United States Patent and Trademark Office shall have a Patent Public Advisory Committee and a Trademark Public Advisory Committee, each of which shall have nine voting members who shall be appointed by the Secretary of Commerce and serve at the pleasure of the Secretary of Commerce. In each year, 3 members shall be appointed to each Advisory Committee for 3-year terms that shall begin on December 1 of that year. Any vacancy on an Advisory Committee shall be filled within 90 days after it occurs. A new member who is appointed to fill a vacancy shall be appointed to serve for the remainder of the predecessor's term.

(2) CHAIR.—The Secretary of Commerce, in consultation with the Director, shall designate a Chair and Vice Chair of each Advisory Committee from among the members appointed under paragraph (1). If the Chair resigns before the completion of his or her term, or is otherwise unable to exercise the functions of the Chair, the Vice Chair shall exercise the functions of the Chair.

(b) BASIS FOR APPOINTMENTS.—Members of each Advisory Committee—

(1) shall be citizens of the United States who shall be chosen so as to represent the interests of diverse users of the United States Patent and Trademark Office with respect to patents, in the case of the Patent Public Advisory Committee, and with respect to trademarks, in the case of the Trademark Public Advisory Committee;

(2) shall include members who represent small and large entity applicants located in the United States in proportion to the number of applications filed by such applicants, but in no case shall members who represent small entity patent applicants, including small business concerns, independent inventors, and non-profit organizations, constitute less than 25 percent of the members of the Patent Public Advisory Committee, and such members shall include at least one independent inventor; and

(3) shall include individuals with substantial background and achievement in finance, management, labor relations, science, technology, and office automation.

In addition to the voting members, each Advisory Committee shall include a representative of

each labor organization recognized by the United States Patent and Trademark Office. Such representatives shall be nonvoting members of the Advisory Committee to which they are appointed.

(c) MEETINGS.—Each Advisory Committee shall meet at the call of the chair to consider an agenda set by the chair.

(d) DUTIES.—Each Advisory Committee shall—

(1) review the policies, goals, performance, budget, and user fees of the United States Patent and Trademark Office with respect to patents, in the case of the Patent Public Advisory Committee, and with respect to Trademarks, in the case of the Trademark Public Advisory Committee, and advise the Director on these matters;

(2) within 60 days after the end of each fiscal year—

(A) prepare an annual report on the matters referred to in paragraph (1);

(B) transmit the report to the Secretary of Commerce, the President, and the Committees on the Judiciary of the Senate and the House of Representatives; and

(C) publish the report in the Official Gazette of the United States Patent and Trademark Office.

(e) COMPENSATION.—Each member of each Advisory Committee shall be compensated for each day (including travel time) during which such member is attending meetings or conferences of that Advisory Committee or otherwise engaged in the business of that Advisory Committee, at the rate which is the daily equivalent of the annual rate of basic pay in effect for level III of the Executive Schedule under section 5314 of title 5. While away from such member's home or regular place of business such member shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5.

(f) ACCESS TO INFORMATION.—Members of each Advisory Committee shall be provided access to records and information in the United States Patent and Trademark Office, except for personnel or other privileged information and information concerning patent applications required to be kept in confidence by section 122.

(g) APPLICABILITY OF CERTAIN ETHICS LAWS.—Members of each Advisory Committee shall be special Government employees within the meaning of section 202 of title 18.

(h) INAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to each Advisory Committee.

(i) OPEN MEETINGS.—The meetings of each Advisory Committee shall be open to the public, except that each Advisory Committee may by majority vote meet in executive session when considering personnel, privileged, or other confidential information.

(j) INAPPLICABILITY OF PATENT PROHIBITION.—Section 4 shall not apply to voting members of the Advisory Committees.

(Added Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4714], Nov. 29, 1999, 113 Stat. 1536, 1501A–578; amended Pub. L. 107–273, div. C, title III, §§13203(b), 13206(a)(3), Nov. 2, 2002, 116 Stat. 1902,

1904; Pub. L. 112–274, §1(l)(1), Jan. 14, 2013, 126 Stat. 2458.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (h), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

PRIOR PROVISIONS

A prior section 5, act July 19, 1952, ch. 950, 66 Stat. 793, related to bond of Commissioner and other officers, prior to repeal by Pub. L. 92–310, title II, §208(a), June 6, 1972, 86 Stat. 203.

AMENDMENTS

2013—Subsec. (a)(1). Pub. L. 112–274, §1(l)(1)(A), substituted “In each year, 3 members shall be appointed to each Advisory Committee for 3-year terms that shall begin on December 1 of that year. Any vacancy on an Advisory Committee shall be filled within 90 days after it occurs. A new member who is appointed to fill a vacancy shall be appointed to serve for the remainder of the predecessor's term.” for “Members of each Public Advisory Committee shall be appointed for a term of 3 years, except that of the members first appointed, three shall be appointed for a term of 1 year, and three shall be appointed for a term of 2 years. In making appointments to each Committee, the Secretary of Commerce shall consider the risk of loss of competitive advantage in international commerce or other harm to United States companies as a result of such appointments.”

Subsec. (a)(2). Pub. L. 112–274, §1(l)(1)(B), added par. (2) and struck out former par. (2). Prior to amendment, text read as follows: “The Secretary shall designate a chair of each Advisory Committee, whose term as chair shall be for 3 years.”

Subsec. (a)(3). Pub. L. 112–274, §1(l)(1)(C), struck out par. (3). Text read as follows: “Initial appointments to each Advisory Committee shall be made within 3 months after the effective date of the Patent and Trademark Office Efficiency Act. Vacancies shall be filled within 3 months after they occur.”

2002—Subsec. (e). Pub. L. 107–273, §13206(a)(3), struck out “, United States Code” after “title 5” in two places.

Subsec. (g). Pub. L. 107–273, §13206(a)(3), struck out “, United States Code” after “title 18”.

Subsec. (i). Pub. L. 107–273, §13203(b)(1), inserted “, privileged,” after “personnel”.

Subsec. (j). Pub. L. 107–273, §13203(b)(2), added subsec. (j).

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–274, §1(n), Jan. 14, 2013, 126 Stat. 2459, provided that: “Except as otherwise provided in this Act [amending this section and sections 42, 115, 123, 135, 154, 299, and 311 of this title, repealing section 373 of this title, enacting provisions set out as notes under this section and sections 2, 135, 298, and 311 of this title, and amending provisions set out as a note under section 321 of this title], the amendments made by this Act shall take effect on the date of enactment of this Act [Jan. 14, 2013], and shall apply to proceedings commenced on or after such date of enactment.”

EFFECTIVE DATE

Section effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as an Effective Date of 1999 Amendment note under section 1 of this title.

TRANSITION

Pub. L. 112–274, §1(l)(2), Jan. 14, 2013, 126 Stat. 2459, provided that:

“(A) IN GENERAL.—The Secretary of Commerce shall, in the Secretary's discretion, determine the time and

manner in which the amendments made by paragraph (1) [amending this section] shall take effect, except that, in each year following the year in which this Act is enacted [2013], 3 members shall be appointed to each Advisory Committee (to which such amendments apply) for 3-year terms that begin on December 1 of that year, in accordance with section 5(a) of title 35, United States Code, as amended by paragraph (1) of this subsection.

“(B) DEEMED TERMINATION OF TERMS.—In order to implement the amendments made by paragraph (1), the Secretary of Commerce may determine that the term of an existing member of an Advisory Committee under section 5 of title 35, United States Code, shall be deemed to terminate on December 1 of a year beginning after the date of the enactment of this Act [Jan. 14, 2013], regardless of whether December 1 is before or after the date on which such member’s term would terminate if this Act had not been enacted.”

§ 6. Patent Trial and Appeal Board

(a) IN GENERAL.—There shall be in the Office a Patent Trial and Appeal Board. The Director, the Deputy Director, the Commissioner for Patents, the Commissioner for Trademarks, and the administrative patent judges shall constitute the Patent Trial and Appeal Board. The administrative patent judges shall be persons of competent legal knowledge and scientific ability who are appointed by the Secretary, in consultation with the Director. Any reference in any Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to the Board of Patent Appeals and Interferences is deemed to refer to the Patent Trial and Appeal Board.

(b) DUTIES.—The Patent Trial and Appeal Board shall—

- (1) on written appeal of an applicant, review adverse decisions of examiners upon applications for patents pursuant to section 134(a);
- (2) review appeals of reexaminations pursuant to section 134(b);
- (3) conduct derivation proceedings pursuant to section 135; and
- (4) conduct inter partes reviews and post-grant reviews pursuant to chapters 31 and 32.

(c) 3-MEMBER PANELS.—Each appeal, derivation proceeding, post-grant review, and inter partes review shall be heard by at least 3 members of the Patent Trial and Appeal Board, who shall be designated by the Director. Only the Patent Trial and Appeal Board may grant rehearings.

(d) TREATMENT OF PRIOR APPOINTMENTS.—The Secretary of Commerce may, in the Secretary’s discretion, deem the appointment of an administrative patent judge who, before the date of the enactment of this subsection, held office pursuant to an appointment by the Director to take effect on the date on which the Director initially appointed the administrative patent judge. It shall be a defense to a challenge to the appointment of an administrative patent judge on the basis of the judge’s having been originally appointed by the Director that the administrative patent judge so appointed was acting as a de facto officer.

(Added Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4717(2)], Nov. 29, 1999, 113 Stat. 1536, 1501A–580; amended Pub. L. 107–273, div. C, title III, §13203(a)(2), Nov. 2, 2002, 116 Stat. 1902; Pub.

L. 110–313, §1(a)(1), Aug. 12, 2008, 122 Stat. 3014; Pub. L. 112–29, §7(a)(1), Sept. 16, 2011, 125 Stat. 313.)

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (d), probably means the date of enactment of Pub. L. 112–29, which amended this section generally and was approved Sept. 16, 2011.

PRIOR PROVISIONS

A prior section 6, acts July 19, 1952, ch. 950, 66 Stat. 793; Pub. L. 92–132, Oct. 5, 1971, 85 Stat. 364; Pub. L. 93–596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 94–131, §2, Nov. 14, 1975, 89 Stat. 690; Pub. L. 97–247, §§7, 13, Aug. 27, 1982, 96 Stat. 320, 321; Pub. L. 102–204, §8, Dec. 10, 1991, 105 Stat. 1641, related to duties of Commissioner, prior to repeal by Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §§4715(a), 4731], Nov. 29, 1999, 113 Stat. 1536, 1501A–580, 1501A–581, effective 4 months after Nov. 29, 1999.

AMENDMENTS

2011—Pub. L. 112–29 amended section generally. Prior to amendment, section related to the establishment, composition, and function of the Board of Patent Appeals and Interferences and to the appointment of administrative patent judges.

2008—Subsec. (a). Pub. L. 110–313, §1(a)(1)(A), (B), substituted “Deputy Director” for “Deputy Commissioner” in second sentence and “Secretary of Commerce, in consultation with the Director” for “Director” in last sentence.

Subsecs. (c), (d). Pub. L. 110–313, §1(a)(1)(C), which directed addition of subsecs. (c) and (d) at end of subsec. (a), was executed by adding subsecs. (c) and (d) at end of section to reflect the probable intent of Congress.

2002—Subsec. (a). Pub. L. 107–273, which directed amendment of subsec. (a) by inserting “the Deputy Commissioner,” after “Commissioner,” was executed by making the insertion after “The Director,” to reflect the probable intent of Congress.

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112–29, §7(e), Sept. 16, 2011, 125 Stat. 315, provided that: “The amendments made by this section [amending this section, sections 134, 141, and 143 of this title, section 1295 of Title 28, Judiciary and Judicial Procedure, section 2182 of Title 42, The Public Health and Welfare, and section 20135 of Title 51, National and Commercial Space Programs] 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 proceedings commenced on or after that effective date, except that—

“(1) the extension of jurisdiction to the United States Court of Appeals for the Federal Circuit to entertain appeals of decisions of the Patent Trial and Appeal Board in reexaminations under the amendment made by subsection (c)(2) [amending section 1295 of Title 28] shall be deemed to take effect on the date of the enactment of this Act and shall extend to any decision of the Board of Patent Appeals and Interferences with respect to a reexamination that is entered before, on, or after the date of the enactment of this Act;

“(2) the provisions of sections 6, 134, and 141 of title 35, United States Code, as in effect on the day before the effective date of the amendments made by this section shall continue to apply to inter partes reexaminations that are requested under section 311 of such title before such effective date;

“(3) the Patent Trial and Appeal Board may be deemed to be the Board of Patent Appeals and Interferences for purposes of appeals of inter partes reexaminations that are requested under section 311 of title 35, United States Code, before the effective date of the amendments made by this section; and

“(4) the Director’s [Under Secretary of Commerce for Intellectual Property and Director of the United