

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 66 (R.S. 4918, amended Mar. 2, 1927, ch. 273, § 12, 44 Stat. 1337).
Language is changed.

AMENDMENTS

2011—Pub. L. 112–29, § 20(j), struck out “of this title” after “146”.

Pub. L. 112–29, § 3(h)(1), amended section generally. Prior to amendment, text read as follows: “The owner of an interfering patent may have relief against the owner of another by civil action, and the court may adjudicate the question of the validity of any of the interfering patents, in whole or in part. The provisions of the second paragraph of section 146 shall apply to actions brought under this section.”

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by section 3(h)(1) of Pub. L. 112–29 effective upon the expiration of the 18-month period beginning on Sept. 16, 2011, and applicable to certain applications for patent and any patents issuing thereon, see section 3(n) of Pub. L. 112–29, set out as an Effective Date of 2011 Amendment; Savings Provisions note under section 100 of this title.

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.

SAVINGS PROVISIONS

Provisions of 35 U.S.C. 291, as in effect on the day before the expiration of the 18-month period beginning on Sept. 16, 2011, apply to each claim of certain applications for patent, and certain patents issued thereon, for which the amendments made by section 3 of Pub. L. 112–29 also apply, see section 3(n)(2) of Pub. L. 112–29, set out as an Effective Date of 2011 Amendment; Savings Provisions note under section 100 of this title.

§ 292. False marking

(a) Whoever, without the consent of the patentee, marks upon, or affixes to, or uses in advertising in connection with anything made, used, offered for sale, or sold by such person within the United States, or imported by the person into the United States, the name or any imitation of the name of the patentee, the patent number, or the words “patent,” “patentee,” or the like, with the intent of counterfeiting or imitating the mark of the patentee, or of deceiving the public and inducing them to believe that the thing was made, offered for sale, sold, or imported into the United States by or with the consent of the patentee; or

Whoever marks upon, or affixes to, or uses in advertising in connection with any unpatented article, the word “patent” or any word or number importing that the same is patented, for the purpose of deceiving the public; or

Whoever marks upon, or affixes to, or uses in advertising in connection with any article, the words “patent applied for,” “patent pending,” or any word importing that an application for patent has been made, when no application for patent has been made, or if made, is not pending, for the purpose of deceiving the public—

Shall be fined not more than \$500 for every such offense. Only the United States may sue for the penalty authorized by this subsection.

(b) A person who has suffered a competitive injury as a result of a violation of this section may file a civil action in a district court of the

United States for recovery of damages adequate to compensate for the injury.

(c) The marking of a product, in a manner described in subsection (a), with matter relating to a patent that covered that product but has expired is not a violation of this section.

(July 19, 1952, ch. 950, 66 Stat. 814; Pub. L. 103–465, title V, § 533(b)(6), Dec. 8, 1994, 108 Stat. 4990; Pub. L. 112–29, § 16(b)(1)–(3), Sept. 16, 2011, 125 Stat. 329.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 50 (R.S. 4901).

This is a criminal provision. The first two paragraphs of the corresponding section of existing statute are consolidated, a new paragraph relating to false marking of “patent applied for” is added, and false advertising is included in all the offenses. The minimum fine which has been interpreted by the courts as a maximum, is replaced by a higher maximum. The informer action is included as additional to an ordinary criminal action.

AMENDMENTS

2011—Subsec. (a). Pub. L. 112–29, § 16(b)(1), inserted at end “Only the United States may sue for the penalty authorized by this subsection.”

Subsec. (b). Pub. L. 112–29, § 16(b)(2), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “Any person may sue for the penalty, in which event one-half shall go to the person suing and the other to the use of the United States.”

Subsec. (c). Pub. L. 112–29, § 16(b)(3), added subsec. (c).

1994—Subsec. (a). Pub. L. 103–465, in first par., substituted “used, offered for sale, or sold by such person within the United States, or imported by the person into the United States” for “used, or sold by him” and “made, offered for sale, sold, or imported into the United States” for “made or sold”.

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112–29, § 16(b)(4), Sept. 16, 2011, 125 Stat. 329, provided that: “The amendments made by this subsection [amending this section] shall apply to all cases, without exception, that are pending on, or commenced on or after, the date of the enactment of this Act [Sept. 16, 2011].”

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 effective on date that is one year after date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], with provisions relating to earliest filed patent application, see section 534(a), (b)(3) of Pub. L. 103–465, set out as a note under section 154 of this title.

§ 293. Nonresident patentee; service and notice

Every patentee not residing in the United States may file in the Patent and Trademark Office a written designation stating the name and address of a person residing within the United States on whom may be served process or notice of proceedings affecting the patent or rights thereunder. If the person designated cannot be found at the address given in the last designation, or if no person has been designated, the United States District Court for the Eastern District of Virginia shall have jurisdiction and summons shall be served by publication or otherwise as the court directs. The court shall have the same jurisdiction to take any action respecting the patent or rights thereunder that it would have if the patentee were personally within the jurisdiction of the court.