

(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 of the patent of developing such invention or discovery or acquiring such patent.

(2) In determining what constitutes just compensation as provided for in section 2181 of this title, or in determining the amount of any award under subsection (b)(3), the Commission shall take into account the considerations set forth in paragraph (1) of this subsection and the actual use of such invention or discovery. Such compensation may be paid by the Commission in periodic payments or in a lump sum.

(d) Limitations

Every application under this section shall be barred unless filed within six years after the date on which first accrues the right to such reasonable royalty fee, just compensation, or award for which such application is filed.

(Aug. 1, 1946, ch. 724, title I, §157, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 947; amended Pub. L. 87-206, §11, Sept. 6, 1961, 75 Stat. 478; Pub. L. 93-276, title II, §201, May 10, 1974, 88 Stat. 119; renumbered title I, Pub. L. 102-486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

REFERENCES IN TEXT

Sections 281, 283, and 284 of title 18, referred to in subsec. (a), were repealed by Pub. L. 87-849, §2, Oct. 23, 1962, 76 Stat. 1126, except as sections 281 and 283 apply to retired officers of the Armed Forces of the United States, and were supplanted by sections 203, 205, and 207, respectively, of Title 18, Crimes and Criminal Procedures. For further details, see "Exemptions" note set out under section 203 of Title 18.

This chapter, referred to in subsec. (b)(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(e)(1) to (3) of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

AMENDMENTS

1974—Subsec. (b)(3). Pub. L. 93-276 substituted "after consultation with the General Advisory Committee" for "upon the recommendation of the General Advisory Committee".

1961—Subsec. (d). Pub. L. 87-206 added subsec. (d).

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. Patent Compensation Board established by this section transferred to Energy Research and Development Administration and functions of Atomic Energy Commission with respect thereto transferred to Administrator

by section 5814(d) of this title. See, also, notes set out under sections 5814 and 5841 of this title. Energy Research and Development Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See Pub. L. 92-463, §14, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

EX. ORD. NO. 11477. AWARDS BY COMMISSION WITHOUT APPROVAL OF PRESIDENT

Ex. Ord. No. 11477, eff. Aug. 7, 1969, 34 F.R. 12937, provided:

By virtue of the authority vested in me by section 301 of title 3 of the United States Code, and as President of the United States, it is ordered as follows:

The Atomic Energy Commission is hereby designated and empowered, without approval, ratification, or other action by the President, to grant by the unanimous affirmative vote of all of its members not more than five awards in any calendar year, not exceeding the sum of \$5,000 each, pursuant to the last sentence of section 157b(3) of the Atomic Energy Act of 1954 (42 U.S.C. 2187(b)(3)) which authorizes the Commission to grant awards for especially meritorious contributions to the development, use, or control of atomic energy.

RICHARD NIXON.

MODIFICATION OF EXECUTIVE ORDER NO. 11477

Ex. Ord. No. 11477, Aug. 7, 1969, 34 F.R. 12937, set out as a note above, when referring to functions of the Atomic Energy Commission is modified to provide that all such functions shall be exercised by the Secretary of Energy and the Nuclear Regulatory Commission, see section 4(a)(1) of Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957, set out as a note under section 7151 of this title.

§ 2188. Monopolistic use of patents

Whenever the owner of any patent hereafter granted for any invention or discovery of primary use in the utilization or production of special nuclear material or atomic energy is found by a court of competent jurisdiction to have intentionally used such patent in a manner so as to violate any of the antitrust laws specified in section 2135(a) of this title, there may be included in the judgment of the court, in its discretion and in addition to any other lawful sanctions, a requirement that such owner license such patent to any other licensee of the Commission who demonstrates a need therefor. If the court, at its discretion, deems that such licensee shall pay a reasonable royalty to the owner of the patent, the reasonable royalty shall be determined in accordance with section 2187 of this title.

(Aug. 1, 1946, ch. 724, title I, §158, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 947; amended Pub. L. 87-206, §12, Sept. 6, 1961, 75 Stat. 478; renumbered title I, Pub. L. 102-486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

AMENDMENTS

1961—Pub. L. 87-206 made it discretionary, rather than mandatory, for the court to require payment of royalties by a licensee to the owner of a patent.

§ 2189. Federally financed research

Nothing in this chapter shall affect the right of the Commission to require that patents granted on inventions, made or conceived during the course of federally financed research or operations, be assigned to the United States.

(Aug. 1, 1946, ch. 724, title I, §159, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 948; 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.

§ 2190. Saving clause for prior patent applications

Any patent application on which a patent was denied by the United States Patent and Trademark Office under sections 1811(a)(1), 1811(a)(2), or 1811(b)¹ of this title, and which is not prohibited by section 2181 or 2185 of this title may be reinstated upon application to the Commissioner of Patents and Trademarks within one year after August 30, 1954 and shall then be deemed to have been continuously pending since its original filing date: *Provided, however*, That no patent issued upon any patent application so reinstated shall in any way furnish a basis of claim against the Government of the United States.

(Aug. 1, 1946, ch. 724, title I, §160, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 948; amended Pub. L. 93-596, §3, Jan. 2, 1975, 88 Stat. 1949; renumbered title I, Pub. L. 102-486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

REFERENCES IN TEXT

Sections 1811(a)(1), 1811(a)(2), and 1811(b) of this title, referred to in text, were omitted from the Code in the general amendment and renumbering of act Aug. 1, 1946 (which was classified to section 1801 et seq. of this title) by act Aug. 30, 1954, ch. 1073, 68 Stat. 919.

CHANGE OF NAME

Patent Office and Commissioner of Patents changed to Patent and Trademark Office and Commissioner of Patents and Trademarks, respectively, pursuant to Pub. L. 93-596, §3, Jan. 2, 1975, 88 Stat. 1949, set out as a note under section 1 of Title 35, Patents.

SUBCHAPTER XIII—GENERAL AUTHORITY OF COMMISSION

§ 2201. General duties of Commission

In the performance of its functions the Commission is authorized to—

(a) Establishment of advisory boards

establish advisory boards to advise with and make recommendations to the Commission on

legislation, policies, administration, research, and other matters, provided that the Commission issues regulations setting forth the scope, procedure, and limitations of the authority of each such board;

(b) Standards governing use and possession of material

establish by rule, regulation, or order, such standards and instructions to govern the possession and use of special nuclear material, source material, and byproduct material as the Commission may deem necessary or desirable to promote the common defense and security or to protect health or to minimize danger to life or property; in addition, the Commission shall prescribe such regulations or orders as may be necessary or desirable to promote the Nation's common defense and security with regard to control, ownership, or possession of any equipment or device, or important component part especially designed for such equipment or device, capable of separating the isotopes of uranium or enriching uranium in the isotope 235;

(c) Studies and investigations

make such studies and investigations, obtain such information, and hold such meetings or hearings as the Commission may deem necessary or proper to assist it in exercising any authority provided in this chapter, or in the administration or enforcement of this chapter, or any regulations or orders issued thereunder. For such purposes the Commission is authorized to administer oaths and affirmations, and by subpoena to require any person to appear and testify, or to appear and produce documents, or both, at any designated place. Witnesses subpoenaed under this subsection shall be paid the same fees and mileage as are paid witnesses in the district courts of the United States;

(d) Employment of personnel

appoint and fix the compensation of such officers and employees as may be necessary to carry out the functions of the Commission. Such officers and employees shall be appointed in accordance with the civil-service laws and their compensation fixed in accordance with chapter 51 and subchapter III of chapter 53 of title 5, except that, to the extent the Commission deems such action necessary to the discharge of its responsibilities, personnel may be employed and their compensation fixed without regard to such laws: *Provided, however*, That no officer or employee (except such officers and employees whose compensation is fixed by law, and scientific and technical personnel up to a limit of the highest rate of grade 18 of the General Schedule) whose position would be subject to chapter 51 and subchapter III of chapter 53 of title 5, if such provisions were applicable to such position, shall be paid a salary at a rate in excess of the rate payable under such provisions for positions of equivalent difficulty or responsibility. Such rates of compensation may be adopted by the Commission as may be authorized by chapter 51 and subchapter III of chapter 53 of title 5, as of the same date such rates are authorized for

¹ See References in Text note below.