

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 Title 35, Patents.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100-667, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 applicable to proceedings pending in the Patent and Trademark Office on Nov. 8, 1984, and to appeals pending in the United States Court of Appeals for the Federal Circuit on that date, see section 414(c) of Pub. L. 98-620, set out as a note under section 142 of Title 35, Patents.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-164 effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1975 AMENDMENTS

Amendment by Pub. L. 93-600 effective Jan. 2, 1975, but not to affect any suit, proceeding, or appeal then pending, see section 4 of Pub. L. 93-600, set out as a note under section 1063 of this title.

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 this title.

EFFECTIVE DATE OF 1958 AMENDMENT

For effective date and applicability of amendment by Pub. L. 85-609, see section 3 of Pub. L. 85-609, set out as a note under section 1067 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of Commerce, with certain exceptions, to Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

REORGANIZATION PLAN NO. 5 OF 1950

Amendment by Pub. L. 85-609 as subject to Reorganization Plan No. 5 of 1950, see note set out under section 1067 of this title.

§ 1072. Registration as constructive notice of claim of ownership

Registration of a mark on the principal register provided by this chapter or under the Act of March 3, 1881, or the Act of February 20, 1905, shall be constructive notice of the registrant's claim of ownership thereof.

(July 5, 1946, ch. 540, title I, §22, 60 Stat. 435.)

REFERENCES IN TEXT

Acts March 3, 1881, and February 20, 1905, referred to in text, are acts Mar. 3, 1881, ch. 138, 21 Stat. 502 and Feb. 20, 1905, ch. 592, 33 Stat. 724, which were repealed insofar as inconsistent with this chapter by act July 5, 1946, ch. 540, §46(a), 60 Stat. 444. Act Feb. 20, 1905, was classified to sections 81 to 109 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

SUBCHAPTER II—THE SUPPLEMENTAL REGISTER

§ 1091. Supplemental register

(a) Marks registerable

In addition to the principal register, the Director shall keep a continuation of the register provided in paragraph (b) of section 1 of the Act of March 19, 1920, entitled "An Act to give effect to certain provisions of the convention for the protection of trademarks and commercial names, made and signed in the city of Buenos Aires, in the Argentine Republic, August 20, 1910, and for other purposes", to be called the supplemental register. All marks capable of distinguishing applicant's goods or services and not registrable on the principal register provided in this chapter, except those declared to be unregistrable under subsections (a), (b), (c), (d), and (e)(3) of section 1052 of this title, which are in lawful use in commerce by the owner thereof, on or in connection with any goods or services may be registered on the supplemental register upon the payment of the prescribed fee and compliance with the provisions of subsections (a) and (e) of section 1051 of this title so far as they are applicable. Nothing in this section shall prevent the registration on the supplemental register of a mark, capable of distinguishing the applicant's goods or services and not registrable on the principal register under this chapter, that is declared to be unregistrable under section 1052(e)(3) of this title, if such mark has been in lawful use in commerce by the owner thereof, on or in connection with any goods or services, since before December 8, 1993.

(b) Application and proceedings for registration

Upon the filing of an application for registration on the supplemental register and payment of the prescribed fee the Director shall refer the application to the examiner in charge of the registration of marks, who shall cause an examination to be made and if on such examination it shall appear that the applicant is entitled to registration, the registration shall be granted. If the applicant is found not entitled to registration the provisions of subsection (b) of section 1062 of this title shall apply.

(c) Nature of mark

For the purposes of registration on the supplemental register, a mark may consist of any trademark, symbol, label, package, configuration of goods, name, word, slogan, phrase, surname, geographical name, numeral, device, any matter that as a whole is not functional, or any combination of any of the foregoing, but such mark must be capable of distinguishing the applicant's goods or services.

(July 5, 1946, ch. 540, title II, §23, 60 Stat. 435; Pub. L. 87-772, §13, Oct. 9, 1962, 76 Stat. 773; Pub. L. 100-667, title I, §121, Nov. 16, 1988, 102 Stat. 3942; Pub. L. 103-182, title III, §333(b), Dec. 8, 1993, 107 Stat. 2114; Pub. L. 105-330, title II,