

supplying, or causing to be supplied, of any component or components of a patented invention after the date of enactment of this Act [Nov. 8, 1984].

“(d) No United States patent granted before the date of enactment of this Act [Nov. 8, 1984] shall abridge or affect the right of any person or his successors in business who made, purchased, or used prior to such effective date anything protected by the patent, to continue the use of, or to sell to others to be used or sold, the specific thing so made, purchased, or used, if the patent claims were invalid or otherwise unenforceable on a ground obviated by section 103 or 104 of this Act [amending this section and sections 116 and 120 of this title] and the person made, purchased, or used the specific thing in reasonable reliance on such invalidity or unenforceability. If a person reasonably relied on such invalidity or unenforceability, the court before which such matter is in question may provide for the continued manufacture, use, or sale of the thing made, purchased, or used as specified, or for the manufacture, use, or sale of which substantial preparation was made before the date of enactment of this Act, and it may also provide for the continued practice of any process practiced, or for the practice of which substantial preparation was made, prior to the date of enactment, to the extent and under such terms as the court deems equitable for the protection of investments made or business commenced before the date of enactment.

“(e) The amendments made by this Act shall not affect the right of any party in any case pending in court on the date of enactment [Nov. 8, 1984] to have their rights determined on the basis of the substantive law in effect prior to the date of enactment.”

**[§ 104. Repealed. Pub. L. 112–29, § 3(d), Sept. 16, 2011, 125 Stat. 287]**

Section, act July 19, 1952, ch. 950, 66 Stat. 798; Pub. L. 93–596, § 1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 94–131, § 6, Nov. 14, 1975, 89 Stat. 691; Pub. L. 98–622, title IV, § 403(a), Nov. 8, 1984, 98 Stat. 3392; Pub. L. 103–182, title III, § 331, Dec. 8, 1993, 107 Stat. 2113; Pub. L. 103–465, title V, § 531(a), Dec. 8, 1994, 108 Stat. 4982; Pub. L. 106–113, div. B, § 1000(a)(9) [title IV, § 4732(a)(10)(A)], Nov. 29, 1999, 113 Stat. 1536, 1501A–582; Pub. L. 107–273, div. C, title III, § 13206(b)(1)(B), Nov. 2, 2002, 116 Stat. 1906; Pub. L. 112–29, § 20(j), Sept. 16, 2011, 125 Stat. 335, related to inventions made abroad.

**Statutory Notes and Related Subsidiaries**

**EFFECTIVE DATE OF REPEAL**

Repeal 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.

**§ 105. Inventions in outer space**

(a) Any invention made, used or sold in outer space on a space object or component thereof under the jurisdiction or control of the United States shall be considered to be made, used or sold within the United States for the purposes of this title, except with respect to any space object or component thereof that is specifically identified and otherwise provided for by an international agreement to which the United States is a party, or with respect to any space object or component thereof that is carried on the registry of a foreign state in accordance with the Convention on Registration of Objects Launched into Outer Space.

(b) Any invention made, used or sold in outer space on a space object or component thereof that is carried on the registry of a foreign state

in accordance with the Convention on Registration of Objects Launched into Outer Space, shall be considered to be made, used or sold within the United States for the purposes of this title if specifically so agreed in an international agreement between the United States and the state of registry.

(Added Pub. L. 101–580, § 1(a), Nov. 15, 1990, 104 Stat. 2863.)

**Statutory Notes and Related Subsidiaries**

**EFFECTIVE DATE; SPECIAL RULES**

Pub. L. 101–580, § 2, Nov. 15, 1990, 104 Stat. 2863, provided that:

“(a) **EFFECTIVE DATE.**—Subject to subsections (b), (c), and (d) of this section, the amendments made by the first section of this Act [enacting this section] shall apply to all United States patents granted before, on, or after the date of enactment of this Act [Nov. 15, 1990], and to all applications for United States patents pending on or filed on or after such date of enactment.

“(b) **FINAL DECISIONS.**—The amendments made by the first section of this Act [enacting this section] shall not affect any final decision made by a court or the Patent and Trademark Office before the date of enactment of this Act [Nov. 15, 1990] with respect to a patent or an application for a patent, if no appeal from such decision is pending and the time for filing an appeal has expired.

“(c) **PENDING CASES.**—The amendments made by the first section of this Act [enacting this section] shall not affect the right of any party in any case pending in a court on the date of enactment of this Act [Nov. 15, 1990] to have the party’s rights determined on the basis of the substantive law in effect before such date of enactment.

“(d) **NON-APPLICABILITY.**—The amendments made by the first section of this Act [enacting this section] shall not apply to any process, machine, article of manufacture, or composition of matter, an embodiment of which was launched prior to the date of enactment of this Act [Nov. 15, 1990].”

**CHAPTER 11—APPLICATION FOR PATENT**

Sec.

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| 111. | Application.   |
| 112. | Specification.   |
| 113. | Drawings.  |
| 114. | Models, specimens.   |
| 115. | Inventor’s oath or declaration.  |
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| 118. | Filing by other than inventor.   |
| 119. | Benefit of earlier filing date; right of priority.                       |
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| 121. | Divisional applications.   |
| 122. | Confidential status of applications; publication of patent applications. |
| 123. | Micro entity defined.  |

**Editorial Notes**

**AMENDMENTS**

2011—Pub. L. 112–29, § 10(g)(2), Sept. 16, 2011, 125 Stat. 319, which directed adding item 123 at the end of this chapter, was executed by adding the item at the end of the table of sections of this chapter, to reflect the probable intent of Congress.

Pub. L. 112–29, § 4(a)(4), Sept. 16, 2011, 125 Stat. 296, amended item 115 generally, substituting “Inventor’s oath or declaration” for “Oath of applicant”.

2002—Pub. L. 107–273, div. C, title III, § 13206(a)(7), Nov. 2, 2002, 116 Stat. 1904, substituted “Inventors” for “Joint inventors” in item 116.

1999—Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §4507(5)], Nov. 29, 1999, 113 Stat. 1536, 1501A-566, inserted “; publication of patent applications” after “applications” in item 122.

1994—Pub. L. 103-465, title V, §532(c)(6), Dec. 8, 1994, 108 Stat. 4987, substituted “Application” for “Application for patent” in item 111 and “Benefit of earlier filing date; right of priority” for “Benefit of earlier filing date in foreign country; right of priority” in item 119.

### § 111. Application

#### (a) IN GENERAL.—

(1) WRITTEN APPLICATION.—An application for patent shall be made, or authorized to be made, by the inventor, except as otherwise provided in this title, in writing to the Director.

(2) CONTENTS.—Such application shall include—

- (A) a specification as prescribed by section 112;
- (B) a drawing as prescribed by section 113; and
- (C) an oath or declaration as prescribed by section 115.

(3) FEE, OATH OR DECLARATION, AND CLAIMS.—The application shall be accompanied by the fee required by law. The fee, oath or declaration, and 1 or more claims may be submitted after the filing date of the application, within such period and under such conditions, including the payment of a surcharge, as may be prescribed by the Director. Upon failure to submit the fee, oath or declaration, and 1 or more claims within such prescribed period, the application shall be regarded as abandoned.

(4) FILING DATE.—The filing date of an application shall be the date on which a specification, with or without claims, is received in the United States Patent and Trademark Office.

#### (b) PROVISIONAL APPLICATION.—

(1) AUTHORIZATION.—A provisional application for patent shall be made or authorized to be made by the inventor, except as otherwise provided in this title, in writing to the Director. Such application shall include—

- (A) a specification as prescribed by section 112(a); and
- (B) a drawing as prescribed by section 113.

(2) CLAIM.—A claim, as required by subsections (b) through (e) of section 112, shall not be required in a provisional application.

(3) FEE.—The application shall be accompanied by the fee required by law. The fee may be submitted after the filing date of the application, within such period and under such conditions, including the payment of a surcharge, as may be prescribed by the Director. Upon failure to submit the fee within such prescribed period, the application shall be regarded as abandoned.

(4) FILING DATE.—The filing date of a provisional application shall be the date on which a specification, with or without claims, is received in the United States Patent and Trademark Office.

(5) ABANDONMENT.—Notwithstanding the absence of a claim, upon timely request and as prescribed by the Director, a provisional application may be treated as an application filed

under subsection (a). Subject to section 119(e)(3), if no such request is made, the provisional application shall be regarded as abandoned 12 months after the filing date of such application and shall not be subject to revival after such 12-month period.

(6) OTHER BASIS FOR PROVISIONAL APPLICATION.—Subject to all the conditions in this subsection and section 119(e), and as prescribed by the Director, an application for patent filed under subsection (a) may be treated as a provisional application for patent.

(7) NO RIGHT OF PRIORITY OR BENEFIT OF EARLIEST FILING DATE.—A provisional application shall not be entitled to the right of priority of any other application under section 119, 365(a), or 386(a) or to the benefit of an earlier filing date in the United States under section 120, 121, 365(c), or 386(c).

(8) APPLICABLE PROVISIONS.—The provisions of this title relating to applications for patent shall apply to provisional applications for patent, except as otherwise provided, and except that provisional applications for patent shall not be subject to sections 131 and 135.

(c) PRIOR FILED APPLICATION.—Notwithstanding the provisions of subsection (a), the Director may prescribe the conditions, including the payment of a surcharge, under which a reference made upon the filing of an application under subsection (a) to a previously filed application, specifying the previously filed application by application number and the intellectual property authority or country in which the application was filed, shall constitute the specification and any drawings of the subsequent application for purposes of a filing date. A copy of the specification and any drawings of the previously filed application shall be submitted within such period and under such conditions as may be prescribed by the Director. A failure to submit the copy of the specification and any drawings of the previously filed application within the prescribed period shall result in the application being regarded as abandoned. Such application shall be treated as having never been filed, unless—

- (1) the application is revived under section 27; and
- (2) a copy of the specification and any drawings of the previously filed application are submitted to the Director.

(July 19, 1952, ch. 950, 66 Stat. 798; Pub. L. 97-247, §5, Aug. 27, 1982, 96 Stat. 319; Pub. L. 103-465, title V, §532(b)(3), Dec. 8, 1994, 108 Stat. 4986; Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §§4732(a)(10)(A), 4801(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A-582, 1501A-588; Pub. L. 107-273, div. C, title III, §13206(b)(1)(B), Nov. 2, 2002, 116 Stat. 1906; Pub. L. 112-29, §§3(e)(2), 4(a)(3), (d), 20(j), Sept. 16, 2011, 125 Stat. 287, 295, 296, 335; Pub. L. 112-211, title I, §102(3), title II, §201(a), Dec. 18, 2012, 126 Stat. 1531, 1533.)

#### HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §33 (R.S. 4888, amended (1) Mar. 3, 1915, ch. 94, §1, 38 Stat. 958; (2) May 23, 1930, ch. 312, §2, 46 Stat. 376).

The corresponding section of existing statute is divided into an introductory section relating to the application generally (this section) and a section on the specification (sec. 112).