

Editorial Notes**AMENDMENTS**

2012—Subsec. (b)(2)(B)(iii). Pub. L. 112-211 struck out “, unless it is shown to the satisfaction of the Director that the delay in submitting the notice was unintentional” after “regarded as abandoned”.

2011—Subsec. (b)(2)(A)(ii). Pub. L. 112-29, §20(j), struck out “of this title” after “181”.

Subsec. (b)(2)(A)(iii). Pub. L. 112-29, §20(j), struck out “of this title” after “111(b)”.

Subsec. (b)(2)(A)(iv). Pub. L. 112-29, §20(j), struck out “of this title” after “16”.

Subsec. (d). Pub. L. 112-29, §20(j), struck out “of this title” after “17”.

Subsec. (e). Pub. L. 112-29, §8(a), added subsec. (e).

1999—Pub. L. 106-113 amended section catchline and text generally. Prior to amendment, text read as follows: “Applications for patents shall be kept in confidence by the Patent and Trademark Office and no information concerning the same given without authority of the applicant or owner unless necessary to carry out the provisions of any Act of Congress or in such special circumstances as may be determined by the Commissioner.”

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

Statutory Notes and Related Subsidiaries**EFFECTIVE DATE OF 2012 AMENDMENT**

Amendment by Pub. L. 112-211 effective on the date that is 1 year after Dec. 18, 2012, applicable to patents issued before, on, or after that effective date and patent applications pending on or filed after that effective date, and not effective with respect to patents in litigation commenced before that effective date, see section 203 of Pub. L. 112-211, set out as an Effective Date note under section 27 of this title.

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112-29, §8(b), Sept. 16, 2011, 125 Stat. 316, provided that: “The amendments made by this section [amending this section] 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 any patent application filed before, on, or after that effective date.”

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.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-113 effective Nov. 29, 2000, and applicable only to applications (including international applications designating the United States) filed on or after that date, and applications published pursuant to subsec. (b) of this section resulting from an international application filed before Nov. 29, 2000 not to be effective as prior art as of the filing date of the international application, but to be effective as prior art in accordance with section 102(e) of this title in effect on Nov. 28, 2000, see section 1000(a)(9) [title IV, §4508] of Pub. L. 106-113, as amended, set out as a note under section 10 of this title.

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.

STUDY OF APPLICANTS FILING ONLY IN UNITED STATES

Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §4502(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A-562, provided that:

“(1) IN GENERAL.—The Comptroller General shall conduct a 3-year study of the applicants who file only in

the United States on or after the effective date of this subtitle [see section 1000(a)(9) [title IV, §4508] of Pub. L. 106-113, set out as an Effective Date of 1999 Amendment note under section 10 of this title] and shall provide the results of such study to the Judiciary Committees of the House of Representatives and the Senate.

“(2) CONTENTS.—The study conducted under paragraph (1) shall—

“(A) consider the number of such applicants in relation to the number of applicants who file in the United States and outside of the United States;

“(B) examine how many domestic-only filers request at the time of filing not to be published;

“(C) examine how many such filers rescind that request or later choose to file abroad;

“(D) examine the status of the entity seeking an application and any correlation that may exist between such status and the publication of patent applications; and

“(E) examine the abandonment/issuance ratios and length of application pendency before patent issuance or abandonment for published versus unpublished applications.”

§ 123. Micro entity defined

(a) IN GENERAL.—For purposes of this title, the term “micro entity” means an applicant who makes a certification that the applicant—

(1) qualifies as a small entity, as defined in regulations issued by the Director;

(2) has not been named as an inventor on more than 4 previously filed patent applications, other than applications filed in another country, provisional applications under section 111(b), or international applications filed under the treaty defined in section 351(a) for which the basic national fee under section 41(a) was not paid;

(3) did not, in the calendar year preceding the calendar year in which the applicable fee is being paid, have a gross income, as defined in section 61(a) of the Internal Revenue Code of 1986, exceeding 3 times the median household income for that preceding calendar year, as most recently reported by the Bureau of the Census; and

(4) has not assigned, granted, or conveyed, and is not under an obligation by contract or law to assign, grant, or convey, a license or other ownership interest in the application concerned to an entity that, in the calendar year preceding the calendar year in which the applicable fee is being paid, had a gross income, as defined in section 61(a) of the Internal Revenue Code of 1986, exceeding 3 times the median household income for that preceding calendar year, as most recently reported by the Bureau of the Census.

(b) APPLICATIONS RESULTING FROM PRIOR EMPLOYMENT.—An applicant is not considered to be named on a previously filed application for purposes of subsection (a)(2) if the applicant has assigned, or is under an obligation by contract or law to assign, all ownership rights in the application as the result of the applicant's previous employment.

(c) FOREIGN CURRENCY EXCHANGE RATE.—If an applicant's or entity's gross income in the preceding calendar year is not in United States dollars, the average currency exchange rate, as reported by the Internal Revenue Service, during that calendar year shall be used to determine whether the applicant's or entity's gross income

exceeds the threshold specified in paragraphs¹ (3) or (4) of subsection (a).

(d) INSTITUTIONS OF HIGHER EDUCATION.—For purposes of this section, a micro entity shall include an applicant who certifies that—

(1) the applicant's employer, from which the applicant obtains the majority of the applicant's income, is an institution of higher education as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)); or

(2) the applicant has assigned, granted, conveyed, or is under an obligation by contract or law, to assign, grant, or convey, a license or other ownership interest in the particular applications to such an institution of higher education.

(e) DIRECTOR'S AUTHORITY.—In addition to the limits imposed by this section, the Director may, in the Director's discretion, impose income limits, annual filing limits, or other limits on who may qualify as a micro entity pursuant to this section if the Director determines that such additional limits are reasonably necessary to avoid an undue impact on other patent applicants or owners or are otherwise reasonably necessary and appropriate. At least 3 months before any limits proposed to be imposed pursuant to this subsection take effect, the Director shall inform the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate of any such proposed limits.

(Added and amended Pub. L. 112-29, §§10(g)(1), 20(j), Sept. 16, 2011, 125 Stat. 318, 335; Pub. L. 112-274, §1(m), Jan. 14, 2013, 126 Stat. 2459.)

Editorial Notes

REFERENCES IN TEXT

Section 61(a) of the Internal Revenue Code of 1986, referred to in subsec. (a)(3), (4), is classified to section 61(a) of Title 26, Internal Revenue Code.

AMENDMENTS

2013—Subsec. (a). Pub. L. 112-274 inserted “of this title” after “For purposes” in introductory provisions.

2011—Subsec. (a). Pub. L. 112-29, §20(j), struck out “of this title” after “For purposes” in introductory provisions.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112-274 effective Jan. 14, 2013, and applicable to proceedings commenced on or after such date, see section 1(n) of Pub. L. 112-274, set out as a note under section 5 of this title.

EFFECTIVE DATE OF 2011 AMENDMENT

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.

EFFECTIVE DATE

Section effective on Sept. 16, 2011, see section 10(i)(1) of Pub. L. 112-29, set out as a Fee Setting Authority note under section 41 of this title.

¹ So in original. Probably should be “paragraph”.

CHAPTER 12—EXAMINATION OF APPLICATION

Sec.	
131.	Examination of application.
132.	Notice of rejection; reexamination.
133.	Time for prosecuting application.
134.	Appeal to the Patent Trial and Appeal Board.
135.	Derivation proceedings.

Editorial Notes

AMENDMENTS

2011—Pub. L. 112-29, §3(j)(5), Sept. 16, 2011, 125 Stat. 291, amended items 134 and 135 generally, substituting “Appeal to the Patent Trial and Appeal Board” for “Appeal to the Board of Patent Appeals and Interferences” in item 134 and “Derivation proceedings” for “Interferences” in item 135.

1984—Pub. L. 98-622, title II, §204(b)(2), Nov. 8, 1984, 98 Stat. 3388, substituted “Patent Appeals and Interferences” for “Appeals” in item 134.

Statutory Notes and Related Subsidiaries

TRANSFER OF ACCELERATION CERTIFICATE ISSUED PURSUANT TO THE PATENTS FOR HUMANITY PROGRAM

Pub. L. 116-316, Jan. 5, 2021, 134 Stat. 5065, provided that:

“SECTION 1. SHORT TITLE.

“This Act may be cited as the ‘Patents for Humanity Program Improvement Act’.

“SEC. 2. TRANSFERABILITY OF ACCELERATION CERTIFICATES.

“(a) IN GENERAL.—A holder of an acceleration certificate issued pursuant to the Patents for Humanity Program (established in the notice entitled ‘Humanitarian Awards Pilot Program’, published at 77 Fed. Reg. 6544 (February 8, 2012)), or any successor thereto, of the United States Patent and Trademark Office, may transfer (including by sale) the entitlement to such acceleration certificate to another person.

“(b) REQUIREMENT.—An acceleration certificate transferred under subsection (a) shall be subject to any other applicable limitations under the notice entitled ‘Humanitarian Awards Pilot Program’, published at 77 Fed. Reg. 6544 (February 8, 2012), or any successor thereto.”

§ 131. Examination of application

The Director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor.

(July 19, 1952, ch. 950, 66 Stat. 801; 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.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §36 (R.S. 4893).

The first part is revised in language and amplified. The phrase “and that the invention is sufficiently useful and important” is omitted as unnecessary, the requirements for patentability being stated in sections 101, 102 and 103.

Editorial Notes

AMENDMENTS

2002—Pub. L. 107-273 made technical correction to directory language of Pub. L. 106-113. See 1999 Amendment note below.