

CHAPTER 17—SECRECY OF CERTAIN INVENTIONS AND FILING APPLICATIONS IN FOREIGN COUNTRY

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Editorial Notes

AMENDMENTS

2002—Pub. L. 107-273, div. C, title III, §13206(a)(10), Nov. 2, 2002, 116 Stat. 1904, substituted “to” for “of” in item 183.

§ 181. Secrecy of certain inventions and withholding of patent

Whenever publication or disclosure by the publication of an application or by the grant of a patent on an invention in which the Government has a property interest might, in the opinion of the head of the interested Government agency, be detrimental to the national security, the Commissioner of Patents upon being so notified shall order that the invention be kept secret and shall withhold the publication of the application or the grant of a patent therefor under the conditions set forth hereinafter.

Whenever the publication or disclosure of an invention by the publication of an application or by the granting of a patent, in which the Government does not have a property interest, might, in the opinion of the Commissioner of Patents, be detrimental to the national security, he shall make the application for patent in which such invention is disclosed available for inspection to the Atomic Energy Commission, the Secretary of Defense, and the chief officer of any other department or agency of the Government designated by the President as a defense agency of the United States.

Each individual to whom the application is disclosed shall sign a dated acknowledgment thereof, which acknowledgment shall be entered in the file of the application. If, in the opinion of the Atomic Energy Commission, the Secretary of a Defense Department, or the chief officer of another department or agency so designated, the publication or disclosure of the invention by the publication of an application or by the granting of a patent therefor would be detrimental to the national security, the Atomic Energy Commission, the Secretary of a Defense Department, or such other chief officer shall notify the Commissioner of Patents and the Commissioner of Patents shall order that the invention be kept secret and shall withhold the publication of the application or the grant of a patent for such period as the national interest requires, and notify the applicant thereof. Upon proper showing by the head of the department or agency who caused the secrecy order to be issued that the examination of the application might jeopardize the national interest, the Commissioner of Patents shall thereupon main-

tain the application in a sealed condition and notify the applicant thereof. The owner of an application which has been placed under a secrecy order shall have a right to appeal from the order to the Secretary of Commerce under rules prescribed by him.

An invention shall not be ordered kept secret and the publication of the application or the grant of a patent withheld for a period of more than one year. The Commissioner of Patents shall renew the order at the end thereof, or at the end of any renewal period, for additional periods of one year upon notification by the head of the department or the chief officer of the agency who caused the order to be issued that an affirmative determination has been made that the national interest continues so to require. An order in effect, or issued, during a time when the United States is at war, shall remain in effect for the duration of hostilities and one year following cessation of hostilities. An order in effect, or issued, during a national emergency declared by the President shall remain in effect for the duration of the national emergency and six months thereafter. The Commissioner of Patents may rescind any order upon notification by the heads of the departments and the chief officers of the agencies who caused the order to be issued that the publication or disclosure of the invention is no longer deemed detrimental to the national security.

(July 19, 1952, ch. 950, 66 Stat. 805; Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §§4507(7), 4732(a)(10)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A-566, 1501A-582.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §151 (Feb. 1, 1952, ch. 4, §1, 66 Stat. 3, 4).

Language is changed.

Editorial Notes

AMENDMENTS

1999—Pub. L. 106-113, §1000(a)(9) [title IV, §4732(a)(10)(B)], substituted “Commissioner of Patents” for “Commissioner” wherever appearing.

Pub. L. 106-113, §1000(a)(9) [title IV, §4507(7)(A)], in first par., inserted “by the publication of an application or” after “disclosure” and “the publication of the application or” after “withhold”.

Pub. L. 106-113, §1000(a)(9) [title IV, §4507(7)(B)], inserted “by the publication of an application or” after “disclosure of an invention” in second par.

Pub. L. 106-113, §1000(a)(9) [title IV, §4507(7)(C)], in third par., inserted “by the publication of the application or” after “disclosure of the invention” and “the publication of the application or” after “withhold”.

Pub. L. 106-113, §1000(a)(9) [title IV, §4507(7)(D)], inserted “the publication of an application or” after “kept secret and” in first sentence of fourth par.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 1000(a)(9) [title IV, §4507(7)] of 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, 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.

Amendment by section 1000(a)(9) [title IV, §4732(a)(10)(B)] of Pub. L. 106-113 effective 4 months