

uty Commissioner, two Assistant Commissioners, and examiners-in-chief appointed under section 7 of this title. The Deputy Commissioner, or, in the event of a vacancy in that office, the Assistant Commissioner senior in date of appointment shall fill the office of Commissioner during a vacancy in that office until the Commissioner is appointed and takes office. The Commissioner of Patents and Trademarks, the Deputy Commissioner, and the Assistant Commissioners shall be appointed by the President, by and with the advice and consent of the Senate. The Secretary of Commerce, upon the nomination of the Commissioner, in accordance with law shall appoint all other officers and employees.

“(b) The Secretary of Commerce may vest in himself the functions of the Patent and Trademark Office and its officers and employees specified in this title and may from time to time authorize their performance by any other officer or employee.

“(c) The Secretary of Commerce is authorized to fix the per annum rate of basic compensation of each examiner-in-chief in the Patent and Trademark Office at not in excess of the maximum scheduled rate provided for positions in grade 17 of the General Schedule of the Classification Act of 1949, as amended.

“(d) The Commissioner of Patents and Trademarks shall be an Assistant Secretary of Commerce and shall receive compensation at the rate in effect for level III of the Executive Schedule under section 5314 of title 5, United States Code.

“(e) The members of the Trademark Trial and Appeal Board of the Patent and Trademark Office shall each be paid at a rate not to exceed the maximum rate of basic pay payable for GS-16 of the General Schedule under section 5332 of title 5.”

Subsec. (d). Pub. L. 106-44 struck out “, United States Code” after “title 5”.

1998—Subsec. (d). Pub. L. 105-304 substituted “in effect for level III of the Executive Schedule under section 5314 of title 5, United States Code” for “prescribed by law for Assistant Secretaries of Commerce”.

1984—Subsec. (e). Pub. L. 98-622 added subsec. (e).

1982—Subsec. (a). Pub. L. 97-247 struck out “not more than fifteen” after “two Assistant Commissioners, and”, and inserted “appointed under section 7 of this title” after “examiners-in-chief”.

Subsec. (d). Pub. L. 97-366 added subsec. (d).

1975—Pub. L. 93-596 substituted “Patent and Trademark Office” for “Patent Office”, and “Commissioner of Patents and Trademarks” for “Commissioner of Patents”, wherever appearing.

Subsec. (a). Pub. L. 93-601 designated first par. as subsec. (a), redesignated first assistant commissioner as a Deputy Commissioner, granted authority for appointment of not more than fifteen examiners-in-chief to Secretary of Commerce instead of the President, and struck out provision relating to performance by assistant commissioners of duties assigned by Commissioner.

Subsecs. (b), (c). Pub. L. 93-601 designated second and third pars. as subsecs. (b) and (c), respectively.

1964—Pub. L. 88-426 repealed provisions which prescribed annual rate of compensation of Commissioner.

1959—Pub. L. 86-370 authorized Secretary of Commerce to fix compensation of examiners-in-chief.

1958—Pub. L. 85-933 increased number of examiners-in-chief from nine to not more than fifteen and specified annual compensation of Commissioner.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2011 AMENDMENT

Notwithstanding section 35 of Pub. L. 112-29 (set out as a note under section 1 of this title), amendment by section 21 of Pub. L. 112-29 effective as of Sept. 16, 2011, see section 1(g) of Pub. L. 112-274, set out as a note under section 2 of this title.

Amendment by section 20(i)(1) of Pub. L. 112-29 effective upon the expiration of the 1-year period beginning on Sept. 16, 2011, and applicable to proceedings com-

menced 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 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 this title.

##### EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-622, title IV, § 406(b), Nov. 8, 1984, 98 Stat. 3393, provided that: “The amendments made by sections 401, 402, and 405 of this Act [amending this section and sections 361, 366, 371, 372, and 376 of this title] shall take effect six months after the date of the enactment of this Act [Nov. 8, 1984].”

##### EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-247 effective Aug. 27, 1982, see section 17(a) of Pub. L. 97-247, set out as a note under section 41 of this title.

##### EFFECTIVE DATE OF 1975 AMENDMENT

Pub. L. 93-601, § 4(b), Jan. 2, 1975, 88 Stat. 1957, provided that: “This Act [amending this section and sections 7 and 151 of this title and enacting provisions set out as a note under section 151 of this title] shall be effective upon enactment [Jan. 2, 1975]. Examiners-in-chief in office on the date of enactment shall continue in office under and in accordance with their then existing appointments.”

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.

##### EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-426 effective on first day of first pay period which begins on or after July 1, 1964, except to the extent provided in section 501(c) of Pub. L. 88-426, see section 501 of Pub. L. 88-426.

##### EFFECTIVE DATE OF 1959 AMENDMENT

Pub. L. 86-370, § 7(b), Sept. 23, 1959, 73 Stat. 653, provided that: “Sections 1 [amending this section, section 7 of this title, and provisions set out as a note below], 3 [amending sections 2205 and 2208 of former Title 5, Executive Departments and Government Officers and Employees], and 6 [amending section 1082 of former Title 5 and section 903 of Title 20, Education] of this Act shall become effective on the first day of the first pay period which begins after the date of enactment of this Act [Sept. 23, 1959].” Such section 7(b) was repealed by Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 660.

##### EXISTING POSITIONS, COMPENSATION, AND APPOINTMENTS UNAFFECTED BY PUB. L. 86-370 UNTIL ACTION TAKEN UNDER AMENDMENTS

Pub. L. 86-370, § 1(c), Sept. 23, 1959, 73 Stat. 650, provided that: “The amendments made by this section [amending sections 1 and 7 of this title] shall not affect—

“(1) any position of examiner-in-chief or designated examiner-in-chief existing immediately prior to the effective date of this section [see Effective Date of 1959 Amendment note set out above], or

“(2) any incumbent of any such position, his appointment thereto, his rate of compensation, or his right to receive such compensation, until appropriate action is taken under authority of such amendments.”

#### § 4. Restrictions on officers and employees as to interest in patents

Officers and employees of the Patent and Trademark Office shall be incapable, during the period of their appointments and for one year

thereafter, of applying for a patent and of acquiring, directly or indirectly, except by inheritance or bequest, any patent or any right or interest in any patent, issued or to be issued by the Office. In patents applied for thereafter they shall not be entitled to any priority date earlier than one year after the termination of their appointment.

(July 19, 1952, ch. 950, 66 Stat. 793; Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949.)

#### HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 4 (R.S. 480).

The language is revised and inability to apply for a patent, included in the original language, is made explicit.

The period of disability is increased to include one year after leaving the Office.

The further restriction, that no priority date earlier than one year after leaving the Office can be claimed, is added.

The one year period is made inapplicable to applications which may be pending when the revised title goes into effect by section 4(g) of the bill.

#### Editorial Notes

##### AMENDMENTS

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

#### Statutory Notes and Related Subsidiaries

##### 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.

### § 5. Patent and Trademark Office Public Advisory Committees

(a) ESTABLISHMENT OF PUBLIC ADVISORY COMMITTEES.—

(1) APPOINTMENT.—The United States Patent and Trademark Office shall have a Patent Public Advisory Committee and a Trademark Public Advisory Committee, each of which shall have nine voting members who shall be appointed by the Secretary of Commerce and serve at the pleasure of the Secretary of Commerce. In each year, 3 members shall be appointed to each Advisory Committee for 3-year terms that shall begin on December 1 of that year. Any vacancy on an Advisory Committee shall be filled within 90 days after it occurs. A new member who is appointed to fill a vacancy shall be appointed to serve for the remainder of the predecessor's term.

(2) CHAIR.—The Secretary of Commerce, in consultation with the Director, shall designate a Chair and Vice Chair of each Advisory Committee from among the members appointed under paragraph (1). If the Chair resigns before the completion of his or her term, or is otherwise unable to exercise the functions of the Chair, the Vice Chair shall exercise the functions of the Chair.

(b) BASIS FOR APPOINTMENTS.—Members of each Advisory Committee—

(1) shall be citizens of the United States who shall be chosen so as to represent the interests of diverse users of the United States Patent and Trademark Office with respect to patents,

in the case of the Patent Public Advisory Committee, and with respect to trademarks, in the case of the Trademark Public Advisory Committee;

(2) shall include members who represent small and large entity applicants located in the United States in proportion to the number of applications filed by such applicants, but in no case shall members who represent small entity patent applicants, including small business concerns, independent inventors, and non-profit organizations, constitute less than 25 percent of the members of the Patent Public Advisory Committee, and such members shall include at least one independent inventor; and

(3) shall include individuals with substantial background and achievement in finance, management, labor relations, science, technology, and office automation.

In addition to the voting members, each Advisory Committee shall include a representative of each labor organization recognized by the United States Patent and Trademark Office. Such representatives shall be nonvoting members of the Advisory Committee to which they are appointed.

(c) MEETINGS.—Each Advisory Committee shall meet at the call of the chair to consider an agenda set by the chair.

(d) DUTIES.—Each Advisory Committee shall—

(1) review the policies, goals, performance, budget, and user fees of the United States Patent and Trademark Office with respect to patents, in the case of the Patent Public Advisory Committee, and with respect to Trademarks, in the case of the Trademark Public Advisory Committee, and advise the Director on these matters;

(2) within 60 days after the end of each fiscal year—

(A) prepare an annual report on the matters referred to in paragraph (1);

(B) transmit the report to the Secretary of Commerce, the President, and the Committees on the Judiciary of the Senate and the House of Representatives; and

(C) publish the report in the Official Gazette of the United States Patent and Trademark Office.

(e) COMPENSATION.—Each member of each Advisory Committee shall be compensated for each day (including travel time) during which such member is attending meetings or conferences of that Advisory Committee or otherwise engaged in the business of that Advisory Committee, at the rate which is the daily equivalent of the annual rate of basic pay in effect for level III of the Executive Schedule under section 5314 of title 5. While away from such member's home or regular place of business such member shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5.

(f) ACCESS TO INFORMATION.—Members of each Advisory Committee shall be provided access to records and information in the United States Patent and Trademark Office, except for personnel or other privileged information and information concerning patent applications required to be kept in confidence by section 122.