

the Patent and Trademark Office, prior to repeal by Pub. L. 102-204, §9, Dec. 10, 1991, 105 Stat. 1641. See section 41(j) of this title.

Pub. L. 99-607, §4, Nov. 6, 1986, 100 Stat. 3471, provided that the Commissioner of Patents and Trademarks could not impose a fee for use of public patent or trademark search rooms and libraries and that costs of such rooms and libraries should come from amounts appropriated by Congress, prior to repeal by Pub. L. 100-703, title I, §104(a), Nov. 19, 1988, 102 Stat. 4675.

#### PATENT FEES

Pub. L. 100-703, title I, §103(b), Nov. 19, 1988, 102 Stat. 4674, prohibited Commissioner of Patents and Trademarks, during fiscal years 1989, 1990, and 1991, from increasing fees established under subsec. (d) of this section, except for purposes of making adjustments which in the aggregate did not exceed fluctuations during the previous three years in the Consumer Price Index, and from establishing additional fees under such section during such fiscal years. Similar provisions were contained in Pub. L. 99-607, §3(b), Nov. 6, 1986, 100 Stat. 3471.

Pub. L. 98-622, title IV, §404, Nov. 8, 1984, 98 Stat. 3392, provided that:

“(a) Notwithstanding section 41 of title 35, United States Code, as in effect before the enactment of Public Law 97-247 (96 Stat. 317) [Aug. 27, 1982], no fee shall be collected for maintaining a plant patent in force.

“(b) Notwithstanding section 41(c) of title 35, United States Code, as in effect before the enactment of Public Law 97-247 (96 Stat. 317) [Aug. 27, 1982], the Commissioner of Patents and Trademarks [now Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office] may accept, after the six-month grace period referred to in such section 41(c), the payment of any maintenance fee due on any patent based on an application filed in the Patent and Trademark Office on or after December 12, 1980, and before August 27, 1982, to the same extent as in the case of patents based on applications filed in the Patent and Trademark Office on or after August 27, 1982.”

#### § 42. Patent and Trademark Office funding

(a) All fees for services performed by or materials furnished by the Patent and Trademark Office will be payable to the Director.

(b) All fees paid to the Director and all appropriations for defraying the costs of the activities of the Patent and Trademark Office will be credited to the Patent and Trademark Office Appropriation Account in the Treasury of the United States.

(c)(1) To the extent and in the amounts provided in advance in appropriations Acts, fees authorized in this title or any other Act to be charged or established by the Director shall be collected by and shall, subject to paragraph (3), be available to the Director to carry out the activities of the Patent and Trademark Office.

(2) There is established in the Treasury a Patent and Trademark Fee Reserve Fund. If fee collections by the Patent and Trademark Office for a fiscal year exceed the amount appropriated to the Office for that fiscal year, fees collected in excess of the appropriated amount shall be deposited in the Patent and Trademark Fee Reserve Fund. To the extent and in the amounts provided in appropriations Acts, amounts in the Fund shall be made available until expended only for obligation and expenditure by the Office in accordance with paragraph (3).

(3)(A) Any fees that are collected under this title, and any surcharges on such fees, may only

be used for expenses of the Office relating to the processing of patent applications and for other activities, services, and materials relating to patents and to cover a proportionate share of the administrative costs of the Office.

(B) Any fees that are collected under section 31 of the Trademark Act of 1946, and any surcharges on such fees, may only be used for expenses of the Office relating to the processing of trademark registrations and for other activities, services, and materials relating to trademarks and to cover a proportionate share of the administrative costs of the Office.

(d) The Director may refund any fee paid by mistake or any amount paid in excess of that required.

(e) The Secretary of Commerce shall, on the day each year on which the President submits the annual budget to the Congress, provide to the Committees on the Judiciary of the Senate and the House of Representatives—

(1) a list of patent and trademark fee collections by the Patent and Trademark Office during the preceding fiscal year;

(2) a list of activities of the Patent and Trademark Office during the preceding fiscal year which were supported by patent fee expenditures, trademark fee expenditures, and appropriations;

(3) budget plans for significant programs, projects, and activities of the Office, including out-year funding estimates;

(4) any proposed disposition of surplus fees by the Office; and

(5) such other information as the committees consider necessary.

(July 19, 1952, ch. 950, 66 Stat. 796; Pub. L. 94-131, §4, Nov. 14, 1975, 89 Stat. 690; Pub. L. 96-517, §3, Dec. 12, 1980, 94 Stat. 3018; Pub. L. 97-247, §3(g), Aug. 27, 1982, 96 Stat. 319; Pub. L. 97-258, §3(i), Sept. 13, 1982, 96 Stat. 1065; Pub. L. 102-204, §§4, 5(e), Dec. 10, 1991, 105 Stat. 1637, 1640; Pub. L. 105-358, §4, Nov. 10, 1998, 112 Stat. 3274; Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §§4205, 4732(a)(10)(A)], Nov. 29, 1999, 113 Stat. 1536, 1501A-555, 1501A-582; Pub. L. 107-273, div. C, title III, §13206(b)(1)(B), Nov. 2, 2002, 116 Stat. 1906; Pub. L. 112-29, §22(a), Sept. 16, 2011, 125 Stat. 336; Pub. L. 112-274, §1(j), Jan. 14, 2013, 126 Stat. 2457.)

#### HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §79 (Mar. 6, 1920, ch. 94, §1 (part), 41 Stat. 503, 512).

Language has been changed.

#### Editorial Notes

#### REFERENCES IN TEXT

Section 31 of the Trademark Act of 1946, referred to in subsec. (c)(3)(B), is classified to section 1113 of Title 15, Commerce and Trade.

#### AMENDMENTS

2013—Subsec. (c)(3)(A). Pub. L. 112-274, §1(j)(1), substituted “this title,” for “sections 41, 42, and 376,” and “a proportionate share of the administrative costs of the Office” for “a share of the administrative costs of the Office relating to patents”.

Subsec. (c)(3)(B). Pub. L. 112-274, §1(j)(2), substituted “a proportionate share of the administrative costs of the Office” for “a share of the administrative costs of the Office relating to trademarks”.

2011—Subsec. (c). Pub. L. 112-29 designated existing provisions as par. (1), substituted “shall, subject to paragraph (3), be available” for “shall be available”, struck out at end “All fees available to the Director under section 31 of the Trademark Act of 1946 shall be used only for the processing of trademark registrations and for other activities, services, and materials relating to trademarks and to cover a proportionate share of the administrative costs of the Patent and Trademark Office.”, and added pars. (2) and (3).

2002—Subsecs. (a), (b). Pub. L. 107-273 made technical correction to directory language of Pub. L. 106-113, §1000(a)(9) [title IV, §4732(a)(10)(A)]. See 1999 Amendment note below.

1999—Subsecs. (a), (b). Pub. L. 106-113, §1000(a)(9) [title IV, §4732(a)(10)(A)], as amended by Pub. L. 107-273, substituted “Director” for “Commissioner”.

Subsec. (c). Pub. L. 106-113 substituted “Director” for “Commissioner” wherever appearing and, in second sentence, substituted “All fees available” for “Fees available” and “shall be used” for “may be used”.

Subsec. (d). Pub. L. 106-113, §1000(a)(9) [title IV, §4732(a)(10)(A)], substituted “Director” for “Commissioner”.

1998—Subsec. (c). Pub. L. 105-358 substituted first sentence for former first sentence which read as follows: “Revenues from fees shall be available to the Commissioner to carry out, to the extent provided in appropriation Acts, the activities of the Patent and Trademark Office.”

1991—Subsec. (c). Pub. L. 102-204, §5(e), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “Revenues from fees will be available to the Commissioner of Patents to carry out, to the extent provided for in appropriation Acts, the activities of the Patent and Trademark Office. Fees available to the Commissioner under section 31 of the Trademark Act of 1946, as amended (15 U.S.C. 1113), shall be used exclusively for the processing of trademark registrations and for other services and materials related to trademarks.”

Subsec. (e). Pub. L. 102-204, §4, added subsec. (e).

1982—Subsec. (b). Pub. L. 97-258 struck out “, the provisions of section 725e of title 31, United States Code, notwithstanding” after “United States”.

Subsec. (c). Pub. L. 97-247 inserted provision that fees available to the Commissioner under section 31 of the Trademark Act of 1946, as amended (15 U.S.C. 1113), be used exclusively for the processing of trademark registrations and for other services and materials related to trademarks.

1980—Pub. L. 96-517 designated existing provision relating to payment of patent fees as subsec. (a) and struck out provision that, except as provided in sections 361(b) and 376(b) of this title, the Commissioner deposit fees paid in the Treasury of the United States in such manner as directed by the Secretary of the Treasury, designated existing provision relating to return of excess amounts paid as subsec. (d), and added subsecs. (b) and (c).

1975—Pub. L. 94-131 inserted “, except as provided in sections 361(b) and 376(b) of this title.”.

#### 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

Pub. L. 112-29, §22(b), Sept. 16, 2011, 125 Stat. 336, provided that: “The amendments made by this section [amending this section] shall take effect on October 1, 2011.”

##### EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 1000(a)(9) [title IV, §4732(a)(10)(A)] of 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 1998 AMENDMENT

Amendment by Pub. L. 105-358 effective Oct. 1, 1998, see section 5 of Pub. L. 105-358, set out as a note under section 41 of this title.

##### EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-247 effective Oct. 1, 1982, see section 17(a) of Pub. L. 97-247, set out as a note under section 41 of this title.

##### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-517 effective on first day of first fiscal year beginning on or after one calendar year after Dec. 12, 1980, subject to authorization of appropriation account credits from collected reexamination fees prior to the effective date, made available for payment of reexamination proceedings costs, see section 8(c) of Pub. L. 96-517, set out as a note under section 41 of this title.

##### EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-131 effective Jan. 24, 1978, and applicable on and after that date to patent applications filed in the United States and to international applications, where applicable, see section 11 of Pub. L. 94-131, set out as an Effective Date note under section 351 of this title.

##### AUTHORIZATION OF AMOUNTS AVAILABLE TO THE PATENT AND TRADEMARK OFFICE

Pub. L. 107-273, div. C, title III, §13102, Nov. 2, 2002, 116 Stat. 1899, provided that:

“(a) IN GENERAL.—There are authorized to be appropriated to the United States Patent and Trademark Office for salaries and necessary expenses for each of the fiscal years 2003 through 2008 an amount equal to the fees estimated by the Secretary of Commerce to be collected in each such fiscal year, respectively, under—

“(1) title 35, United States Code; and

“(2) the Act entitled ‘An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes’, approved July 5, 1946 (15 U.S.C. 1051 et seq.) (commonly referred to as the Trademark Act of 1946).

“(b) ESTIMATES.—Not later than February 15, of each fiscal year, the Undersecretary of Commerce for Intellectual Property and the Director of the Patent and Trademark Office (in this subtitle [subtitle A (§§13101-13106)] of title III of div. C of Pub. L. 107-273, amending sections 134, 141, 303, 312, and 315 of this title and enacting provisions set out as notes under sections 2, 134, and 303 of this title) referred to as the Director) shall submit an estimate of all fees referred to under subsection (a) to be collected in the next fiscal year to the chairman and ranking member of—

“(1) the Committees on Appropriations and Judiciary of the Senate; and

“(2) the Committees on Appropriations and Judiciary of the House of Representatives.”

##### APPROPRIATIONS AUTHORIZED TO BE CARRIED OVER

Pub. L. 100-703, title I, §102, Nov. 19, 1988, 102 Stat. 4674, provided that: “Amounts appropriated under this Act and such fees as may be collected under title 35, United States Code, and the Trademark Act of 1946 (15 U.S.C. 1051 and following) may remain available until expended.”

Similar provisions were contained in the following prior authorization act:

Pub. L. 99-607, §2, Nov. 6, 1986, 100 Stat. 3470.

#### PART II—PATENTABILITY OF INVENTIONS AND GRANT OF PATENTS

Chap.

Sec.

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