

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.

10. Patentability of Inventions 100

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Editorial Notes

AMENDMENTS

2002—Pub. L. 107-273, div. C, title III, § 13206(a)(6), Nov. 2, 2002, 116 Stat. 1904, substituted “Examination of Application” for “Examination of Applications” in heading of chapter 12.

1982—Pub. L. 97-256, title I, § 101(6), Sept. 8, 1982, 96 Stat. 816, added item for chapter 18.

1975—Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949, substituted “Patent and Trademark Office” for “Patent Office” in heading of chapter 13.

CHAPTER 10—PATENTABILITY OF INVENTIONS

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Editorial Notes

AMENDMENTS

2011—Pub. L. 112-29, § 3(b)(3), (d), Sept. 16, 2011, 125 Stat. 287, substituted in item 102 “Conditions for patentability; novelty” for “Conditions for patentability; novelty and loss of right to patent” and struck out item 104 “Invention made abroad”.

1990—Pub. L. 101-580, § 1(b), Nov. 15, 1990, 104 Stat. 2863, added item 105.

§ 100. Definitions

When used in this title unless the context otherwise indicates—

(a) The term “invention” means invention or discovery.

(b) The term “process” means process, art or method, and includes a new use of a known process, machine, manufacture, composition of matter, or material.

(c) The terms “United States” and “this country” mean the United States of America, its territories and possessions.

(d) The word “patentee” includes not only the patentee to whom the patent was issued but also the successors in title to the patentee.

(e) The term “third-party requester” means a person requesting ex parte reexamination under section 302 who is not the patent owner.

(f) The term “inventor” means the individual or, if a joint invention, the individuals collectively who invented or discovered the subject matter of the invention.

(g) The terms “joint inventor” and “co-inventor” mean any 1 of the individuals who in-

¹ So in original. Does not conform to chapter heading.

vented or discovered the subject matter of a joint invention.

(h) The term “joint research agreement” means a written contract, grant, or cooperative agreement entered into by 2 or more persons or entities for the performance of experimental, developmental, or research work in the field of the claimed invention.

(i)(1) The term “effective filing date” for a claimed invention in a patent or application for patent means—

(A) if subparagraph (B) does not apply, the actual filing date of the patent or the application for the patent containing a claim to the invention; or

(B) the filing date of the earliest application for which the patent or application is entitled, as to such invention, to a right of priority under section 119, 365(a), 365(b), 386(a), or 386(b) or to the benefit of an earlier filing date under section 120, 121, 365(c), or 386(c).

(2) The effective filing date for a claimed invention in an application for reissue or reissued patent shall be determined by deeming the claim to the invention to have been contained in the patent for which reissue was sought.

(j) The term “claimed invention” means the subject matter defined by a claim in a patent or an application for a patent.

(July 19, 1952, ch. 950, 66 Stat. 797; Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, § 4603], Nov. 29, 1999, 113 Stat. 1536, 1501A-567; Pub. L. 112-29, § 3(a), Sept. 16, 2011, 125 Stat. 285; Pub. L. 112-211, title I, § 102(1), Dec. 18, 2012, 126 Stat. 1531.)

HISTORICAL AND REVISION NOTES

Paragraph (a) is added only to avoid repetition of the phrase “invention or discovery” and its derivatives throughout the revised title. The present statutes use the phrase “invention or discovery” and derivatives.

Paragraph (b) is noted under section 101.

Paragraphs (c) and (d) are added to avoid the use of long expressions in various parts of the revised title.

Editorial Notes

AMENDMENTS

2012—Subsec. (i)(1)(B). Pub. L. 112-211 substituted “right of priority under section 119, 365(a), 365(b), 386(a), or 386(b) or to the benefit of an earlier filing date under section 120, 121, 365(c), or 386(c)” for “right of priority under section 119, 365(a), or 365(b) or to the benefit of an earlier filing date under section 120, 121, or 365(c)”.

2011—Subsec. (e). Pub. L. 112-29, § 3(a)(1), struck out “or inter partes reexamination under section 311” after “302”.

Subsecs. (f) to (j). Pub. L. 112-29, § 3(a)(2), added subsecs. (f) to (j).

1999—Subsec. (e). Pub. L. 106-113 added subsec. (e).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2012 AMENDMENT

Pub. L. 112-211, title I, § 103, Dec. 18, 2012, 126 Stat. 1532, provided that:

“(a) IN GENERAL.—The amendments made by this title [enacting part V of this title and amending this section and sections 102, 111, 115, 120, 154, 173, 365, and 366 of this title] shall take effect on the later of—

“(1) the date that is 1 year after the date of the enactment of this Act [Dec. 18, 2012]; or

“(2) the date of entry into force of the treaty with respect to the United States [May 13, 2015].