

Statutory Notes and Related Subsidiaries

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

Pub. L. 112-29, §12(c), Sept. 16, 2011, 125 Stat. 327, provided that: “The amendments made by this section [enacting 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 issued before, on, or after that effective date.”

CHAPTER 26—OWNERSHIP AND ASSIGNMENT

Sec.	
261.	Ownership; assignment.
262.	Joint owners.

§ 261. Ownership; assignment

Subject to the provisions of this title, patents shall have the attributes of personal property. The Patent and Trademark Office shall maintain a register of interests in patents and applications for patents and shall record any document related thereto upon request, and may require a fee therefor.

Applications for patent, patents, or any interest therein, shall be assignable in law by an instrument in writing. The applicant, patentee, or his assigns or legal representatives may in like manner grant and convey an exclusive right under his application for patent, or patents, to the whole or any specified part of the United States.

A certificate of acknowledgment under the hand and official seal of a person authorized to administer oaths within the United States, or, in a foreign country, of a diplomatic or consular officer of the United States or an officer authorized to administer oaths whose authority is proved by a certificate of a diplomatic or consular officer of the United States, or apostille of an official designated by a foreign country which, by treaty or convention, accords like effect to apostilles of designated officials in the United States, shall be prima facie evidence of the execution of an assignment, grant or conveyance of a patent or application for patent.

An interest that constitutes an assignment, grant or conveyance shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice, unless it is recorded in the Patent and Trademark Office within three months from its date or prior to the date of such subsequent purchase or mortgage.

(July 19, 1952, ch. 950, 66 Stat. 810; Pub. L. 93-596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 97-247, §14(b), Aug. 27, 1982, 96 Stat. 321; Pub. L. 112-211, title II, §201(d), Dec. 18, 2012, 126 Stat. 1535.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §47 (R.S. 4898, amended (1) Mar. 3, 1897, ch. 391, §5, 29 Stat. 93 [29 Stat. 693], (2) Feb. 18, 1922, ch. 58, §6, 42 Stat. 391, (3) Aug. 18, 1941, ch. 370, 55 Stat. 634).

The first paragraph is new but is declaratory only. The second paragraph is the same as in the corresponding section of existing statute. The third paragraph is from the existing statute, a specific reference to another statute is omitted. The fourth paragraph is the same as the existing statute but language has been changed.

Editorial Notes

AMENDMENTS

2012—Pub. L. 112-211 inserted “The Patent and Trademark Office shall maintain a register of interests in patents and applications for patents and shall record any document related thereto upon request, and may require a fee therefor.” at end of first par. and substituted “An interest that constitutes an assignment” for “An assignment” in fourth par.

1982—Pub. L. 97-247 inserted “, or apostille of an official designated by a foreign country which, by treaty or convention, accords like effect to apostilles of designated officials in the United States”.

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

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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 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

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.

§ 262. Joint owners

In the absence of any agreement to the contrary, each of the joint owners of a patent may make, use, offer to sell, or sell the patented invention within the United States, or import the patented invention into the United States, without the consent of and without accounting to the other owners.

(July 19, 1952, ch. 950, 66 Stat. 810; Pub. L. 103-465, title V, §533(b)(3), Dec. 8, 1994, 108 Stat. 4989.)

HISTORICAL AND REVISION NOTES

This section states a condition in existing law not expressed in the existing statutes.

Editorial Notes

AMENDMENTS

1994—Pub. L. 103-465 substituted “use, offer to sell, or sell” for “use or sell” and inserted “within the United States, or import the patented invention into the United States,” after “invention”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-465 effective on date that is one year after date on which the WTO Agreement en-

ters into force with respect to the United States [Jan. 1, 1995], with provisions relating to earliest filed patent application, see section 534(a), (b)(3) of Pub. L. 103-465, set out as a note under section 154 of this title.

CHAPTER 27—GOVERNMENT INTERESTS IN PATENTS

Sec.
[266. Repealed.]
267. Time for taking action in Government applications.

Editorial Notes

AMENDMENTS

1965—Pub. L. 89-83, § 8, July 24, 1965, 79 Stat. 261, struck out item 266 “Issue of patents without fees to Government employees”.

[§ 266. Repealed. Pub. L. 89-83, § 8, July 24, 1965, 79 Stat. 261]

Section, act July 19, 1952, ch. 950, § 1, 66 Stat. 811, provided for issuance of patents to government employees without fees.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF REPEAL

Repeal effective three months after July 24, 1965, see section 7(a) of Pub. L. 89-83, set out as an Effective Date of 1965 Amendment note under section 41 of this title.

§ 267. Time for taking action in Government applications

Notwithstanding the provisions of sections 133 and 151, the Director may extend the time for taking any action to three years, when an application has become the property of the United States and the head of the appropriate department or agency of the Government has certified to the Director that the invention disclosed therein is important to the armament or defense of the United States.

(July 19, 1952, ch. 950, 66 Stat. 811; 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; Pub. L. 112-29, § 20(j), Sept. 16, 2011, 125 Stat. 335.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 37 (R.S. 4894, amended (1) Mar. 3, 1897, ch. 391, § 4, 29 Stat. 692, 693, (2) July 6, 1916, ch. 225, § 1, 39 Stat. 345, 347-8, (3) Mar. 2, 1927, ch. 273, § 1, 44 Stat. 1335, (4) Aug. 7, 1939, ch. 568, 53 Stat. 1264).

This provision, which appears as the last two sentences of the corresponding section of the present statute (see note to section 133) is made a separate section and rewritten in simpler form.

Editorial Notes

AMENDMENTS

2011—Pub. L. 112-29 struck out “of this title” after “151”.

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

1999—Pub. L. 106-113, as amended by Pub. L. 107-273, substituted “Director” for “Commissioner” in two places.

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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.

CHAPTER 28—INFRINGEMENT OF PATENTS

Sec.
271. Infringement of patent.
272. Temporary presence in the United States.
273. Defense to infringement based on prior commercial use.

Editorial Notes

AMENDMENTS

2011—Pub. L. 112-29, § 5(b), Sept. 16, 2011, 125 Stat. 299, amended item 273 generally, substituting “Defense to infringement based on prior commercial use” for “Defense to infringement based on earlier inventor”.

1999—Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, § 4302(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A-557, added item 273.

§ 271. Infringement of patent

(a) Except as otherwise provided in this title, whoever without authority makes, uses, offers to sell, or sells any patented invention, within the United States or imports into the United States any patented invention during the term of the patent therefor, infringes the patent.

(b) Whoever actively induces infringement of a patent shall be liable as an infringer.

(c) Whoever offers to sell or sells within the United States or imports into the United States a component of a patented machine, manufacture, combination or composition, or a material or apparatus for use in practicing a patented process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial noninfringing use, shall be liable as a contributory infringer.

(d) No patent owner otherwise entitled to relief for infringement or contributory infringement of a patent shall be denied relief or deemed guilty of misuse or illegal extension of the patent right by reason of his having done one or more of the following: (1) derived revenue from acts which if performed by another without his consent would constitute contributory infringement of the patent; (2) licensed or authorized another to perform acts which if performed without his consent would constitute contributory infringement of the patent; (3) sought to enforce his patent rights against infringement or contributory infringement; (4) refused to license or use any rights to the patent; or (5) conditioned the license of any rights to the patent or the sale of the patented product on the acquisition of a license to rights in another patent or purchase of a separate product, unless, in view