

business who made, purchased, or used, prior to such date of enactment, anything protected by the patent, to continue the use of, or to sell to others to be used or sold, the specific thing so made, purchased, or used, if the patent claims were invalid or otherwise unenforceable on a ground obviated by this section and the person made, purchased, or used the specific thing in reasonable reliance on such invalidity or unenforceability. If a person reasonably relied on such invalidity or unenforceability, the court before which such matter is in question may provide for the continued manufacture, use, or sale of the thing made, purchased, or used as specified, or for the manufacture, use, or sale of which substantial preparation was made before the date of enactment of this section, and it may also provide for the continued practice of any process practiced, or for the practice of which substantial preparation was made, prior to the date of enactment of this section, to the extent and under such terms as the court deems equitable for the protection of investments made or business commenced before such date of enactment.

“(4) The amendments made by this section shall not affect the right of any party in any case pending in court on the date of enactment of this section [Aug. 23, 1988] to have its rights or liabilities—

“(A) under any patent before the court, or

“(B) under any patent granted after such date of enactment which is related to the patent before the court by deriving priority rights under section 120 or 121 of title 35, United States Code, from a patent or an application for patent common to both patents, determined on the basis of the substantive law in effect before the date of enactment of this section.”

PROMULGATION OF REGULATIONS

Section 9101(c) of Pub. L. 100-418 directed Commissioner of Patents and Trademarks to prescribe such regulations as necessary to implement the amendments made by section 9101 (amending sections 184 to 186 of this title).

§ 185. Patent barred for filing without license

Notwithstanding any other provisions of law any person, and his successors, assigns, or legal representatives, shall not receive a United States patent for an invention if that person, or his successors, assigns, or legal representatives shall, without procuring the license prescribed in section 184 of this title, have made, or consented to or assisted another's making, application in a foreign country for a patent or for the registration of a utility model, industrial design, or model in respect of the invention. A United States patent issued to such person, his successors, assigns, or legal representatives shall be invalid, unless the failure to procure such license was through error and without deceptive intent, and the patent does not disclose subject matter within the scope of section 181 of this title.

(July 19, 1952, ch. 950, 66 Stat. 807; Pub. L. 100-418, title IX, §9101(b)(2), Aug. 23, 1988, 102 Stat. 1568; Pub. L. 107-273, div. C, title III, §13206(a)(11), Nov. 2, 2002, 116 Stat. 1904.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §155 (Feb. 1, 1952, ch. 4, §5, 66 Stat. 5).

Language is changed.

AMENDMENTS

2002—Pub. L. 107-273 struck out second period at end.
1988—Pub. L. 100-418 inserted before period at end
“, unless the failure to procure such license was

through error and without deceptive intent, and the patent does not disclose subject matter within the scope of section 181 of this title.”

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-418 applicable, subject to certain qualifications and exceptions, to all United States patents, and to all licenses under section 184 of this title, regardless of the date such patents or licenses are granted, and to all applications for such patents pending on or filed after Aug. 23, 1988, see section 9101(d) of Pub. L. 100-418, set out as a note under section 184 of this title.

§ 186. Penalty

Whoever, during the period or periods of time an invention has been ordered to be kept secret and the grant of a patent thereon withheld pursuant to section 181 of this title, shall, with knowledge of such order and without due authorization, willfully publish or disclose or authorize or cause to be published or disclosed the invention, or material information with respect thereto, or whoever willfully, in violation of the provisions of section 184 of this title, shall file or cause or authorize to be filed in any foreign country an application for patent or for the registration of a utility model, industrial design, or model in respect of any invention made in the United States, shall, upon conviction, be fined not more than \$10,000 or imprisoned for not more than two years, or both.

(July 19, 1952, ch. 950, 66 Stat. 807; Pub. L. 100-418, title IX, §9101(b)(3), Aug. 23, 1988, 102 Stat. 1568.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §156 (Feb. 1, 1952, ch. 4, §6, 66 Stat. 5, 6).

Language is changed.

AMENDMENTS

1988—Pub. L. 100-418, which directed the insertion of “willfully” after second reference to “whoever”, was executed by making the insertion after “or whoever”, as the probable intent of Congress.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-418 applicable, subject to certain qualifications and exceptions, to all United States patents, and to all licenses under section 184 of this title, regardless of the date such patents or licenses are granted, and to all applications for such patents pending on or filed after Aug. 23, 1988, see section 9101(d) of Pub. L. 100-418, set out as a note under section 184 of this title.

§ 187. Nonapplicability to certain persons

The prohibitions and penalties of this chapter shall not apply to any officer or agent of the United States acting within the scope of his authority, nor to any person acting upon his written instructions or permission.

(July 19, 1952, ch. 950, 66 Stat. 808.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §157 (Feb. 1, 1952, ch. 4, §7, 66 Stat. 6).

Language is changed.

§ 188. Rules and regulations, delegation of power

The Atomic Energy Commission, the Secretary of a defense department, the chief officer