

importation, or distribution of a machine, manufacture, or composition of matter or the provision of pharmacy or clinical laboratory services (other than clinical laboratory services provided in a physician's office), where such activities are:

(A) directly related to the commercial development, manufacture, sale, importation, or distribution of a machine, manufacture, or composition of matter or the provision of pharmacy or clinical laboratory services (other than clinical laboratory services provided in a physician's office), and

(B) regulated under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, or the Clinical Laboratories Improvement Act.

(4) This subsection shall not apply to any patent issued based on an application the earliest effective filing date of which is prior to September 30, 1996.

(July 19, 1952, ch. 950, 66 Stat. 813; Pub. L. 100-418, title IX, §9004(a), Aug. 23, 1988, 102 Stat. 1564; Pub. L. 103-465, title V, §533(b)(5), Dec. 8, 1994, 108 Stat. 4989; Pub. L. 104-208, div. A, title I, §101(a) [title VI, §616], Sept. 30, 1996, 110 Stat. 3009, 3009-67; Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §4803], Nov. 29, 1999, 113 Stat. 1536, 1501A-589.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §49 (R.S. 4900, amended Feb. 7, 1927, ch. 67, 44 Stat. 1058).

Language is changed. The proviso in the corresponding section of existing statute is omitted as being temporary in character and now obsolete.

REFERENCES IN TEXT

Section 9006 of the Process Patent Amendments Act of 1988, referred to in subsec. (b)(1), is section 9006 of title IX of Pub. L. 100-418, which is set out as a note under section 271 of this title.

The effective date of the Process Patent Amendments Act of 1988, referred to in subsec. (b)(4)(C), is the effective date of title IX of Pub. L. 100-418. See section 9006 of Pub. L. 100-418, set out as a note under section 271 of this title.

Section 501(c) of the Internal Revenue Code, referred to in subsec. (c)(3), is classified to section 501(c) of Title 26, Internal Revenue Code.

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (c)(3)(B), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

The Public Health Service Act, referred to in subsec. (c)(3)(B), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended, which is classified generally to chapter 6A (§201 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

The Clinical Laboratories Improvement Act, referred to in subsec. (c)(3)(B), probably means the Clinical Laboratories Improvement Act of 1967, section 5 of Pub. L. 90-174, Dec. 5, 1967, 81 Stat. 536, which enacted section 263a of Title 42 and enacted provisions set out as notes under section 263a of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 263a of Title 42 and Tables.

AMENDMENTS

1999—Subsec. (c)(4). Pub. L. 106-113 substituted “based on an application the earliest effective filing date of

which is prior to September 30, 1996” for “before the date of enactment of this subsection”.

1996—Subsec. (c). Pub. L. 104-208 added subsec. (c).

1994—Subsec. (a). Pub. L. 103-465, §533(b)(5)(A), substituted “making, offering for sale, or selling within the United States” for “making or selling” and inserted “or importing any patented article into the United States,” after “under them.”

Subsec. (b)(1)(C). Pub. L. 103-465, §533(b)(5)(B)(i), substituted “use, offer for sale, or sale” for “use, or sale”.

Subsec. (b)(4)(A). Pub. L. 103-465, §533(b)(5)(B)(ii), substituted “sold, offered for sale, or” for “sold or” in introductory provisions.

Subsec. (b)(4)(A)(ii). Pub. L. 103-465, §533(b)(5)(B)(iii), substituted “use, offer for sale, or sale” for “use, or sale”.

Subsec. (b)(4)(C). Pub. L. 103-465, §533(b)(5)(B)(iv), (v), substituted “have been offered for sale or sold” for “have been sold” and “United States, or imported by the person into the United States, before” for “United States before”.

1988—Pub. L. 100-418 inserted “and other remedies” in section catchline, designated existing provisions as subsec. (a), and added subsec. (b).

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 enters 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.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-418 effective 6 months after Aug. 23, 1988, and, subject to enumerated exceptions, applicable only with respect to products made or imported after such effective date, see section 9006 of Pub. L. 100-418, set out as a note under section 271 of this title.

§ 288. Action for infringement of a patent containing an invalid claim

Whenever, without deceptive intention, a claim of a patent is invalid, an action may be maintained for the infringement of a claim of the patent which may be valid. The patentee shall recover no costs unless a disclaimer of the invalid claim has been entered at the Patent and Trademark Office before the commencement of the suit.

(July 19, 1952, ch. 950, 66 Stat. 813; Pub. L. 93-596, §1, Jan. 2, 1975, 88 Stat. 1949.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §71 (R.S. 4922).

The necessity for a disclaimer to recover on valid claims is eliminated. See section 253.

Language is changed.

AMENDMENTS

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

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.

§ 289. Additional remedy for infringement of design patent

Whoever during the term of a patent for a design, without license of the owner, (1) applies the patented design, or any colorable imitation thereof, to any article of manufacture for the