

of Pub. L. 106-113, set out as a note under section 1 of this title.

§ 303. Determination of issue by Director

(a) Within three months following the filing of a request for reexamination under the provisions of section 302 of this title, the Director will determine whether a substantial new question of patentability affecting any claim of the patent concerned is raised by the request, with or without consideration of other patents or printed publications. On his own initiative, and any time, the Director may determine whether a substantial new question of patentability is raised by patents and publications discovered by him or cited under the provisions of section 301 of this title. The existence of a substantial new question of patentability is not precluded by the fact that a patent or printed publication was previously cited by or to the Office or considered by the Office.

(b) A record of the Director's determination under subsection (a) of this section will be placed in the official file of the patent, and a copy promptly will be given or mailed to the owner of record of the patent and to the person requesting reexamination, if any.

(c) A determination by the Director pursuant to subsection (a) of this section that no substantial new question of patentability has been raised will be final and nonappealable. Upon such a determination, the Director may refund a portion of the reexamination fee required under section 302 of this title.

(Added Pub. L. 96-517, §1, Dec. 12, 1980, 94 Stat. 3015; amended Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §4732(a)(9)(A), (10)(A)], Nov. 29, 1999, 113 Stat. 1536, 1501A-582; Pub. L. 107-273, div. C, title III, §§13105(a), 13206(b)(1), Nov. 2, 2002, 116 Stat. 1900, 1905, 1906.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107-273, §13206(b)(1)(B), 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.

Pub. L. 107-273, §13105(a), inserted at end "The existence of a substantial new question of patentability is not precluded by the fact that a patent or printed publication was previously cited by or to the Office or considered by the Office."

Subsec. (b). Pub. L. 107-273, §13206(b)(1)(A), made technical correction to directory language of Pub. L. 106-113, §1000(a)(9) [title IV, §4732(a)(9)(A)(ii)]. See 1999 Amendment note below.

Subsec. (c). Pub. L. 107-273, §13206(b)(1)(B), 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—Pub. L. 106-113, §1000(a)(9) [title IV, §4732(a)(9)(A)(i)], substituted "Director" for "Commissioner" in section catchline.

Subsec. (a). Pub. L. 106-113, §1000(a)(9) [title IV, §4732(a)(10)(A)], as amended by Pub. L. 107-273, §13206(b)(1)(B), substituted "Director" for "Commissioner" in two places.

Subsec. (b). Pub. L. 106-113, §1000(a)(9) [title IV, §4732(a)(9)(A)(ii)], as amended by Pub. L. 107-273, §13206(b)(1)(A), substituted "Director's" for "Commissioner's".

Subsec. (c). Pub. L. 106-113, §1000(a)(9) [title IV, §4732(a)(10)(A)], as amended by Pub. L. 107-273, §13206(b)(1)(B), substituted "Director" for "Commissioner" in two places.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-273, div. C, title III, §13105(b), Nov. 2, 2002, 116 Stat. 1900, provided that: "The amendments made by this section [amending this section and section 312 of this title] shall apply with respect to any determination of the Director of the United States Patent and Trademark Office that is made under section 303(a) or 312(a) of title 35, United States Code, on or after the date of enactment of this Act [Nov. 2, 2002]."

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.

§ 304. Reexamination order by Director

If, in a determination made under the provisions of subsection 303(a) of this title, the Director finds that a substantial new question of patentability affecting any claim of a patent is raised, the determination will include an order for reexamination of the patent for resolution of the question. The patent owner will be given a reasonable period, not less than two months from the date a copy of the determination is given or mailed to him, within which he may file a statement on such question, including any amendment to his patent and new claim or claims he may wish to propose, for consideration in the reexamination. If the patent owner files such a statement, he promptly will serve a copy of it on the person who has requested reexamination under the provisions of section 302 of this title. Within a period of two months from the date of service, that person may file and have considered in the reexamination a reply to any statement filed by the patent owner. That person promptly will serve on the patent owner a copy of any reply filed.

(Added Pub. L. 96-517, §1, Dec. 12, 1980, 94 Stat. 3016; amended 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.)

AMENDMENTS

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 section catchline and text.

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.

§ 305. Conduct of reexamination proceedings

After the times for filing the statement and reply provided for by section 304 of this title have expired, reexamination will be conducted according to the procedures established for initial examination under the provisions of sections 132 and 133 of this title. In any reexamination proceeding under this chapter, the patent owner will be permitted to propose any amendment to his patent and a new claim or claims thereto, in order to distinguish the invention as claimed from the prior art cited under the provi-