AMENDMENTS

2002—Subsec. (b). Pub. L. 107–273 made technical correction to directory language of Pub. L. 106–113. See 1999 Amendment note below.

1999—Subsec. (b). Pub. L. 106–113, as amended by Pub. L. 107–273, substituted ''Director'' for ''Commissioner''.

1986—Subsec. (a). Pub. L. 99–616, § 2(a), struck out '', excluding chapter II thereof'' after ''June 19, 1970''.

Subsec. (b). Pub. L. 99–616, § 2(b), struck out ''excluding part C thereof'' after ''under the treaty''.

Subsec. (g). Pub. L. 99–616, § 2(c), substituted ''The terms 'International Searching Authority' and 'International Preliminary Examining Authority' mean'' for ''The term 'International Searching Authority' means''.

1984—Subsec. (d). Pub. L. 98–622 substituted ''Patent and Trademark Office'' for ''Patent Office''.

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.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9 of Pub. L. 99–616 provided that: ''Sections 2 through 8 of this Act [amending this section and sections 361, 362, 364, 368, 371, and 376 of this title] shall come into force on the same day as the effective date of entry into force of chapter II of the Patent Cooperation Treaty with respect to the United States, by virtue of the withdrawal of the declaration under article 64(1)(a) of the Patent Cooperation Treaty. It shall apply to all international applications pending before or after its effective date.''

[The Patent Cooperation Treaty became effective for the United States on Jan. 24, 1978. The United States, however, was one of six countries (out of the 40 countries who have ratified or acceded to the Treaty) which had reservations not to be bound by Chapter II. The document removing the reservation as to Chapter II was deposited with the Director General of the World Intellectual Property Organization on Apr. 1, 1987. Accordingly, Chapter II of the Treaty for the United States of America and Pub. L. 99–616 became effective 3 months later on July 1, 1987. See 52 F.R. 20038, 20041, May 28, 1987.]

EFFECTIVE DATE OF 1984 AMENDMENT

Section 406(a) of Pub. L. 98–622 provided that: ''Section 404 of this Act [set out as a note under section 41 of this title] and the amendments made by section 403 of this Act [amending this section and sections 104, 361, 362, 363, 364, 365, 367, 368, 371, 372, 373, and 376 of this title] shall take effect on the date of the enactment of this Act [Nov. 8, 1984].''

EFFECTIVE DATE

Section 11 of Pub. L. 94–131 provided that:

''(a) Section 1 of this Act [enacting this part] shall come into force on the same day as the entry into force of the Patent Cooperation Treaty with respect to the United States. It shall apply to international and national applications filed on and after this effective date, even though entitled to the benefit of an earlier filing date, and to patents issued on such applications.

''(b) Sections 2 to 10 of this Act [amending sections 6, 41, 42, 102, 104, 112, 113, 120, and 282 of this title] shall take effect on the same day as section 1 of this Act [enacting this part] and shall apply to all applications for patent actually filed in the United States on and after this effective date, as well as to international applications where applicable.

''(c) Applications for patent on file in the Patent Office [now the Patent and Trademark Office] on the effective date of this Act, and patents issued on such applications, shall be governed by the provisions of title 35, United States Code, in effect immediately prior to the effective date of this Act.''

[The Patent Cooperation Treaty entered into force with respect to the United States on Jan. 24, 1978, with the exception of Chapter II.]

SHORT TITLE OF 1986 AMENDMENT

Section 1 of Pub. L. 99–616 provided: ''That this Act [amending this section and sections 361, 362, 364, 368, 371, and 376 of this title and enacting provisions set out as a note above] may be cited as the 'Act to authorize the United States to participate in chapter II of the Patent Cooperation Treaty'.''

CHAPTER 36—INTERNATIONAL STAGE

Sec.
361. Receiving Office.
362. International Searching Authority and International Preliminary Examining Authority.
363. International application designating the United States: Effect.
364. International stage: Procedure.
365. Right of priority; benefit of the filing date of a prior application.
366. Withdrawn international application.
367. Actions of other authorities: Review.
368. Secrecy of certain inventions; filing international applications in foreign countries.

AMENDMENTS

1986—Pub. L. 99–616, § 3, Nov. 6, 1986, 100 Stat. 3485, amended item 362 generally.

§ 361. Receiving Office

(a) The Patent and Trademark Office shall act as a Receiving Office for international applications filed by nationals or residents of the United States. In accordance with any agreement made between the United States and another country, the Patent and Trademark Office may also act as a Receiving Office for international applications filed by residents or nationals of such country who are entitled to file international applications.

(b) The Patent and Trademark Office shall perform all acts connected with the discharge of duties required of a Receiving Office, including the collection of international fees and their transmittal to the International Bureau.

(c) International applications filed in the Patent and Trademark Office shall be in the English language.

(d) The international fee, and the transmittal and search fees prescribed under section 376(a) of this part, shall either be paid on filing of an international application or within such later time as may be fixed by the Director.

(Added Pub. L. 94–131, § 1, Nov. 14, 1975, 89 Stat. 686; amended Pub. L. 98–622, title IV, §§ 401(a), 403(a), Nov. 8, 1984, 98 Stat. 3391, 3392; Pub. L. 99–616, § 2(d), Nov. 6, 1986, 100 Stat. 3485; 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—Subsec. (d). Pub. L. 107–273 made technical correction to directory language of Pub. L. 106–113. See 1999 Amendment note below.

1999—Subsec. (d). Pub. L. 106–113, as amended by Pub. L. 107–273, substituted ''Director'' for ''Commissioner''.

1986—Subsec. (d). Pub. L. 99–616 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''The basic fee portion of the international fee,

and the transmittal and search fees prescribed under section 376(a) of this part, shall be paid on filing of an international application or within one month after the date of such filing. Payment of designation fees may be made on filing and shall be made not later than one year from the priority date of the international application.''

1984—Subsecs. (a) to (c). Pub. L. 98–622, § 403(a), substituted ''Patent and Trademark Office'' for ''Patent Office''.

Subsec. (d). Pub. L. 98–622, § 401(a), inserted ''or within one month after the date of such filing'' after ''application''.

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.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–616 effective July 1, 1987, and applicable to all international applications pending before or after that date, see section 9 of Pub. L. 99–616, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 401(a) of Pub. L. 98–622 effective six months after Nov. 8, 1984, see section 406(b) of Pub. L. 98–622, set out as a note under section 3 of this title.

Amendment by section 403(a) of Pub. L. 98–622 effective Nov. 8, 1984, see section 406(a) of Pub. L. 98–622, set out as a note under section 351 of this title.

EFFECTIVE DATE

Chapter effective Jan. 24, 1978, and applicable to international and national applications filed on and after that date, see section 11 of Pub. L. 94–131, set out as a note under section 351 of this title.

§ 362. International Searching Authority and International Preliminary Examining Authority

(a) The Patent and Trademark Office may act as an International Searching Authority and International Preliminary Examining Authority with respect to international applications in accordance with the terms and conditions of an agreement which may be concluded with the International Bureau, and may discharge all duties required of such Authorities, including the collection of handling fees and their transmittal to the International Bureau.

(b) The handling fee, preliminary examination fee, and any additional fees due for international preliminary examination shall be paid within such time as may be fixed by the Director.

(Added Pub. L. 94–131, § 1, Nov. 14, 1975, 89 Stat. 686; amended Pub. L. 98–622, title IV, § 403(a), Nov. 8, 1984, 98 Stat. 3392; Pub. L. 99–616, § 4, Nov. 6, 1986, 100 Stat. 3485; 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—Subsec. (b). Pub. L. 107–273 made technical correction to directory language of Pub. L. 106–113. See 1999 Amendment note below.

1999—Subsec. (b). Pub. L. 106–113, as amended by Pub. L. 107–273, substituted ''Director'' for ''Commissioner''.

1986—Pub. L. 99–616 inserted ''and International Preliminary Examining Authority'' in section catchline and amended text generally. Prior to amendment, text read as follows: ''The Patent and Trademark Office may act as an International Searching Authority with respect to international applications in accordance with the terms and conditions of an agreement which may be concluded with the International Bureau.''

1984—Pub. L. 98–622 substituted ''Patent and Trademark Office'' for ''Patent Office''.

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.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–616 effective July 1, 1987, and applicable to all international applications pending before or after that date, see section 9 of Pub. L. 99–616, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–622 effective Nov. 8, 1984, see section 406(a) of Pub. L. 98–622, set out as a note under section 351 of this title.

§ 363. International application designating the United States: Effect

An international application designating the United States shall have the effect, from its international filing date under article 11 of the treaty, of a national application for patent regularly filed in the Patent and Trademark Office except as otherwise provided in section 102(e) of this title.

(Added Pub. L. 94–131, § 1, Nov. 14, 1975, 89 Stat. 686; amended Pub. L. 98–622, title IV, § 403(a), Nov. 8, 1984, 98 Stat. 3392.)

AMENDMENTS

1984—Pub. L. 98–622 substituted ''Patent and Trademark Office'' for ''Patent Office''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–622 effective Nov. 8, 1984, see section 406(a) of Pub. L. 98–622, set out as a note under section 351 of this title.

§ 364. International stage: Procedure

(a) International applications shall be processed by the Patent and Trademark Office when acting as a Receiving Office, International Searching Authority, or International Preliminary Examining Authority, in accordance with the applicable provisions of the treaty, the Regulations, and this title.

(b) An applicant's failure to act within prescribed time limits in connection with requirements pertaining to a pending international application may be excused upon a showing satisfactory to the Director of unavoidable delay, to the extent not precluded by the treaty and the Regulations, and provided the conditions imposed by the treaty and the Regulations regarding the excuse of such failure to act are complied with.

(Added Pub. L. 94–131, § 1, Nov. 14, 1975, 89 Stat. 686; amended Pub. L. 98–622, title IV, § 403(a), Nov. 8, 1984, 98 Stat. 3392; Pub. L. 99–616, § 5, Nov. 6, 1986, 100 Stat. 3485; Pub. L. 106–113, div. B,