EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by 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.

§ 367. Actions of other authorities: Review

(a) Where a Receiving Office other than the Patent and Trademark Office has refused to accord an international filing date to an international application designating the United States or where it has held such application to be withdrawn either generally or as to the United States, the applicant may request review of the matter by the Director, on compliance with the requirements of and within the time limits specified by the treaty and the Regulations. Such review may result in a determination that such application be considered as pending in the national stage.

(b) The review under subsection (a) of this section, subject to the same requirements and conditions, may also be requested in those instances where an international application designating the United States is considered withdrawn due to a finding by the International Bureau under article 12(3) of the treaty.

(Added Pub. L. 94–131, § 1, Nov. 14, 1975, 89 Stat. 687; amended Pub. L. 98–622, title IV, § 403(a), Nov. 8, 1984, 98 Stat. 3392; 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. (a). Pub. L. 107–273 made technical correction to directory language of Pub. L. 106–113. See 1999 Amendment note below.

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

1984—Subsec. (a). 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 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.

§ 368. Secrecy of certain inventions; filing international applications in foreign countries

(a) International applications filed in the Patent and Trademark Office shall be subject to the provisions of chapter 17 of this title.

(b) In accordance with article 27(8) of the treaty, the filing of an international application in a country other than the United States on the invention made in this country shall be considered to constitute the filing of an application in a foreign country within the meaning of chapter 17 of this title, whether or not the United States is designated in that international application.

(c) If a license to file in a foreign country is refused or if an international application is ordered to be kept secret and a permit refused, the Patent and Trademark Office when acting as a Receiving Office, International Searching Authority, or International Preliminary Examining Authority, may not disclose the contents of such application to anyone not authorized to receive such disclosure.

(Added Pub. L. 94–131, § 1, Nov. 14, 1975, 89 Stat. 687; amended Pub. L. 98–622, title IV, § 403(a), Nov. 8, 1984, 98 Stat. 3392; Pub. L. 99–616, § 6, Nov. 6, 1986, 100 Stat. 3486.)

AMENDMENTS

1986—Subsec. (c). Pub. L. 99–616 substituted a comma for ''or'' after ''Receiving Office'' and ''International Preliminary Examining Authority'' for ''both''.

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

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.

CHAPTER 37—NATIONAL STAGE

Sec.
371. National stage: Commencement.
372. National stage: Requirements and procedure.
373. Improper applicant.
374. Publication of international application.
375. Patent issued on international application: Effect.
376. Fees.

AMENDMENTS

1999—Pub. L. 106–113, div. B, § 1000(a)(9) [title IV, § 4507(12)], as added by Pub. L. 107–273, div. C, title III, § 13205(2)(F), Nov. 2, 2002, 116 Stat. 1903, substituted ''Publication of international application'' for ''Publication of international application: Effect'' in item 374.

§ 371. National stage: Commencement

(a) Receipt from the International Bureau of copies of international applications with any amendments to the claims, international search reports, and international preliminary examination reports including any annexes thereto may be required in the case of international applications designating or electing the United States.

(b) Subject to subsection (f) of this section, the national stage shall commence with the expiration of the applicable time limit under article 22(1) or (2), or under article 39(1)(a) of the treaty [1]

(c) The applicant shall file in the Patent and Trademark Office—

(1) the national fee provided in section 41(a) of this title;

(2) a copy of the international application, unless not required under subsection (a) of this section or already communicated by the International Bureau, and a translation into the English language of the international application, if it was filed in another language;

(3) amendments, if any, to the claims in the international application, made under article

[1] So in original. Probably should be followed by a period.

19 of the treaty, unless such amendments have been communicated to the Patent and Trademark Office by the International Bureau, and a translation into the English language if such amendments were made in another language;

(4) an oath or declaration of the inventor (or other person authorized under chapter 11 of this title) complying with the requirements of section 115 of this title and with regulations prescribed for oaths or declarations of applicants;

(5) a translation into the English language of any annexes to the international preliminary examination report, if such annexes were made in another language.

(d) The requirements with respect to the national fee referred to in subsection (c)(1), the translation referred to in subsection (c)(2), and the oath or declaration referred to in subsection (c)(4) of this section shall be complied with by the date of the commencement of the national stage or by such later time as may be fixed by the Director. The copy of the international application referred to in subsection (c)(2) shall be submitted by the date of the commencement of the national stage. Failure to comply with these requirements shall be regarded as abandonment of the application by the parties thereof, unless it be shown to the satisfaction of the Director that such failure to comply was unavoidable. The payment of a surcharge may be required as a condition of accepting the national fee referred to in subsection (c)(1) or the oath or declaration referred to in subsection (c)(4) of this section if these requirements are not met by the date of the commencement of the national stage. The requirements of subsection (c)(3) of this section shall be complied with by the date of the commencement of the national stage, and failure to do so shall be regarded as a cancellation of the amendments to the claims in the international application made under article 19 of the treaty. The requirement of subsection (c)(5) shall be complied with at such time as may be fixed by the Director and failure to do so shall be regarded as cancellation of the amendments made under article 34(2)(b) of the treaty.

(e) After an international application has entered the national stage, no patent may be granted or refused thereon before the expiration of the applicable time limit under article 28 or article 41 of the treaty, except with the express consent of the applicant. The applicant may present amendments to the specification, claims and drawings of the application after the national stage has commenced.

(f) At the express request of the applicant, the national stage of processing may be commenced at any time at which the application is in order for such purpose and the applicable requirements of subsection (c) of this section have been complied with.

(Added Pub. L. 94–131, §1, Nov. 14, 1975, 89 Stat. 688; amended Pub. L. 98–622, title IV, §§402(a)–(d), 403(a), Nov. 8, 1984, 98 Stat. 3391, 3392; Pub. L. 99–616, §7, Nov. 6, 1986, 100 Stat. 3486; Pub. L. 102–204, §5(g)(2), Dec. 10, 1991, 105 Stat. 1641; 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(a)(20), (b)(1)(B), Nov. 2, 2002, 116 Stat. 1905, 1906.)

AMENDMENTS

2002—Subsec. (d). Pub. L. 107–273, §13206(b)(1)(B), made technical correction to directory language of Pub. L. 106–113. See 1999 Amendment note below.

Pub. L. 107–273, §13206(a)(20), inserted period at end.

1999—Subsec. (d). Pub. L. 106–113, as amended by Pub. L. 107–273, §13206(b)(1)(B), substituted ''Director'' for ''Commissioner'' wherever appearing.

1991—Subsec. (c)(1). Pub. L. 102–204 substituted ''provided in section 41(a) of this title'' for ''prescribed under section 376(a)(4) of this part''.

1986—Subsec. (a). Pub. L. 99–616, §7(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''Receipt from the International Bureau of copies of international applications with amendments to the claims, if any, and international search reports may be required in the case of all international applications designating the United States.''

Subsec. (b). Pub. L. 99–616, §7(b), amended subsec. (b) generally, substituting '', or under article 39(1)(a) of the treaty'' for ''of the treaty.''

Subsec. (c)(4), (5). Pub. L. 99–616, §7(c), (d), substituted a semicolon for a period at end of par. (4) and added par. (5).

Subsec. (d). Pub. L. 99–616, §7(e), inserted ''The requirement of subsection (c)(5) shall be complied with at such time as may be fixed by the Commissioner and failure to do so shall be regarded as cancellation of the amendments made under article 34(2)(b) of the treaty'' at end.

Subsec. (e). Pub. L. 99–616, §7(f), inserted ''or article 41'' after ''article 28''.

1984—Subsec. (a). Pub. L. 98–622, §402(a), substituted ''may be'' for ''is'' and struck out '', except those filed in the Patent Office'' after ''United States'', which amendment was executed by striking out '', except those filed in the Patent and Trademark Office'' as the probable intent of Congress in view of the amendment by section 403(a) of Pub. L. 98–622. See Effective Date of 1984 Amendment note below.

Pub. L. 98–622, §403(a), substituted ''Patent and Trademark Office'' for ''Patent Office''.

Subsec. (b). Pub. L. 98–622 struck out '', at which time the applicant shall have complied with the applicable requirements specified in subsection (c) of this section'' after ''of the treaty''.

Subsec. (c). Pub. L. 98–622, §403(a), substituted ''Patent and Trademark Office'' for ''Patent Office'' in provisions preceding par. (1) and in par. (3).

Subsec. (c)(2). Pub. L. 98–622, §402(c)(1), (2), substituted ''communicated by'' for ''received from'' and struck out ''verified'' before ''translation''.

Subsec. (d). Pub. L. 98–622, §402(d), substituted provisions setting forth time periods for compliance with the requirements of subsec. (c), payments of surcharges, and the effect of failure to comply for provisions related only to the effect of failure to comply with the requirements of subsec. (c).

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 402(a)–(d) 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.

§ 372. National stage: Requirements and procedure

(a) All questions of substance and, within the scope of the requirements of the treaty and Regulations, procedure in an international application designating the United States shall be determined as in the case of national applications regularly filed in the Patent and Trademark Office.

(b) In case of international applications designating but not originating in, the United States—

(1) the Director may cause to be reexamined questions relating to form and contents of the application in accordance with the requirements of the treaty and the Regulations;

(2) the Director may cause the question of unity of invention to be reexamined under section 121 of this title, within the scope of the requirements of the treaty and the Regulations; and

(3) the Director may require a verification of the translation of the international application or any other document pertaining to the application if the application or other document was filed in a language other than English.

(Added Pub. L. 94–131, § 1, Nov. 14, 1975, 89 Stat. 689; amended Pub. L. 98–622, title IV, §§ 402(e), (f), 403(a), Nov. 8, 1984, 98 Stat. 3392; 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'' wherever appearing.

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

Subsec. (b)(3). Pub. L. 98–622, § 402(e), added par. (3).

Subsec. (c). Pub. L. 98–622, § 402(f), struck out subsec. (c) which related to cancellation of claims and payment of special fees.

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 1984 AMENDMENT

Amendment by section 402(e), (f) 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.

§ 373. Improper applicant

An international application designating the United States, shall not be accepted by the Patent and Trademark Office for the national stage if it was filed by anyone not qualified under chapter 11 of this title to be an applicant for the purpose of filing a national application in the United States. Such international applications shall not serve as the basis for the benefit of an earlier filing date under section 120 of this title in a subsequently filed application, but may serve as the basis for a claim of the right of priority under subsections (a) through (d) of section 119 of this title, if the United States was not the sole country designated in such international application.

(Added Pub. L. 94–131, § 1, Nov. 14, 1975, 89 Stat. 689; amended Pub. L. 98–622, title IV, § 403(a), Nov. 8, 1984, 98 Stat. 3392; Pub. L. 103–465, title V, § 532(c)(5), Dec. 8, 1994, 108 Stat. 4987.)

AMENDMENTS

1994—Pub. L. 103–465 substituted ''subsections (a) through (d) of section 119'' for ''section 119''.

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

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 effective 6 months after Dec. 8, 1994, and applicable to all patent applications filed in the United States on or after that effective date, with provisions relating to earliest filed patent application, see section 534(b)(1), (3) of Pub. L. 103–465, set out as a note under section 154 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.

§ 374. Publication of international application

The publication under the treaty defined in section 351(a) of this title, of an international application designating the United States shall be deemed a publication under section 122(b), except as provided in sections 102(e) and 154(d) of this title.

(Added Pub. L. 94–131, § 1, Nov. 14, 1975, 89 Stat. 689; amended Pub. L. 106–113, div. B, § 1000(a)(9) [title IV, § 4507(10)], Nov. 29, 1999, 113 Stat. 1536, 1501A–566; Pub. L. 107–273, div. C, title III, § 13205(2)(E), Nov. 2, 2002, 116 Stat. 1903.)

AMENDMENTS

2002—Pub. L. 107–273 amended Pub. L. 106–113, § 1000(a)(9) [title IV, § 4507(10)], see 1999 Amendment note below. Prior to being amended by Pub. L. 107–273, Pub. L. 106–113, § 1000(a)(9) [title IV, § 4507(10)], had amended this section to read as follows: ''The publication under the treaty defined in section 351(a) of this title, of an international application designating the United States shall confer the same rights and shall have the same effect under this title as an application for patent published under section 122(b), except as provided in sections 102(e) and 154(d) of this title.''

1999—Pub. L. 106–113, as amended by Pub. L. 107–273, amended section catchline and text generally. Prior to amendment, text read as follows: ''The publication under the treaty of an international application shall confer no rights and shall have no effect under this title other than that of a printed publication.''

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 effective Nov. 29, 2000, and applicable only to applications (including inter-