The proviso at the end of section 250a of title 28, U.S.C., 1940 ed., is incorporated in section 2501 of this title.

Words ''river and harbor improvements'' were substituted for ''such improvements'', in view of *Dixon v. U.S.*, 103 Ct. Cl. 160, holding that words, ''such improvements'' were not limited to the specific improvements listed in the 1935 act, but applied to any river and harbor improvements.

Changes were made in phraseology.

AMENDMENTS

1992—Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1982—Pub. L. 97–164 substituted ''growers''' for ''growers,'' in section catchline, and ''United States Claims Court'' for ''Court of Claims'' in text.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–164 effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as a note under section 171 of this title.

§ 1498. Patent and copyright cases

(a) Whenever an invention described in and covered by a patent of the United States is used or manufactured by or for the United States without license of the owner thereof or lawful right to use or manufacture the same, the owner's remedy shall be by action against the United States in the United States Court of Federal Claims for the recovery of his reasonable and entire compensation for such use and manufacture. Reasonable and entire compensation shall include the owner's reasonable costs, including reasonable fees for expert witnesses and attorneys, in pursuing the action if the owner is an independent inventor, a nonprofit organization, or an entity that had no more than 500 employees at any time during the 5-year period preceding the use or manufacture of the patented invention by or for the United States. Nothwithstanding[1] the preceding sentences, unless the action has been pending for more than 10 years from the time of filing to the time that the owner applies for such costs and fees, reasonable and entire compensation shall not include such costs and fees if the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.

For the purposes of this section, the use or manufacture of an invention described in and covered by a patent of the United States by a contractor, a subcontractor, or any person, firm, or corporation for the Government and with the authorization or consent of the Government, shall be construed as use or manufacture for the United States.

The court shall not award compensation under this section if the claim is based on the use or manufacture by or for the United States of any article owned, leased, used by, or in the possession of the United States prior to July 1, 1918.

A Government employee shall have the right to bring suit against the Government under this section except where he was in a position to order, influence, or induce use of the invention by the Government. This section shall not confer a right of action on any patentee or any assignee of such patentee with respect to any invention discovered or invented by a person while in the employment or service of the United States, where the invention was related to the official functions of the employee, in cases in which such functions included research and development, or in the making of which Government time, materials or facilities were used.

(b) Hereafter, whenever the copyright in any work protected under the copyright laws of the United States shall be infringed by the United States, by a corporation owned or controlled by the United States, or by a contractor, subcontractor, or any person, firm, or corporation acting for the Government and with the authorization or consent of the Government, the exclusive action which may be brought for such infringement shall be an action by the copyright owner against the United States in the Court of Federal Claims for the recovery of his reasonable and entire compensation as damages for such infringement, including the minimum statutory damages as set forth in section 504(c) of title 17, United States Code: *Provided*, That a Government employee shall have a right of action against the Government under this subsection except where he was in a position to order, influence, or induce use of the copyrighted work by the Government: *Provided, however*, That this subsection shall not confer a right of action on any copyright owner or any assignee of such owner with respect to any copyrighted work prepared by a person while in the employment or service of the United States, where the copyrighted work was prepared as a part of the official functions of the employee, or in the preparation of which Government time, material, or facilities were used: *And provided further*, That before such action against the United States has been instituted the appropriate corporation owned or controlled by the United States or the head of the appropriate department or agency of the Government, as the case may be, is authorized to enter into an agreement with the copyright owner in full settlement and compromise for the damages accruing to him by reason of such infringement and to settle the claim administratively out of available appropriations.

Except as otherwise provided by law, no recovery shall be had for any infringement of a copyright covered by this subsection committed more than three years prior to the filing of the complaint or counterclaim for infringement in the action, except that the period between the date of receipt of a written claim for compensation by the Department or agency of the Government or corporation owned or controlled by the United States, as the case may be, having authority to settle such claim and the date of mailing by the Government of a notice to the claimant that his claim has been denied shall not be counted as a part of the three years, unless suit is brought before the last-mentioned date.

(c) The provisions of this section shall not apply to any claim arising in a foreign country.

[1] So in original. Probably should be ''Notwithstanding''.

(d) Hereafter, whenever a plant variety protected by a certificate of plant variety protection under the laws of the United States shall be infringed by the United States, by a corporation owned or controlled by the United States, or by a contractor, subcontractor, or any person, firm, or corporation acting for the Government, and with the authorization and consent of the Government, the exclusive remedy of the owner of such certificate shall be by action against the United States in the Court of Federal Claims for the recovery of his reasonable and entire compensation as damages for such infringement: *Provided*, That a Government employee shall have a right of action against the Government under this subsection except where he was in a position to order, influence, or induce use of the protected plant variety by the Government: *Provided, however*, That this subsection shall not confer a right of action on any certificate owner or any assignee of such owner with respect to any protected plant variety made by a person while in the employment or service of the United States, where such variety was prepared as a part of the official functions of the employee, or in the preparation of which Government time, material, or facilities were used: *And provided further*, That before such action against the United States has been instituted, the appropriate corporation owned or controlled by the United States or the head of the appropriate agency of the Government, as the case may be, is authorized to enter into an agreement with the certificate owner in full settlement and compromise, for the damages accrued to him by reason of such infringement and to settle the claim administratively out of available appropriations.

(e) Subsections (b) and (c) of this section apply to exclusive rights in mask works under chapter 9 of title 17, and to exclusive rights in designs under chapter 13 of title 17, to the same extent as such subsections apply to copyrights.

(June 25, 1948, ch. 646, 62 Stat. 941; May 24, 1949, ch. 139, § 87, 63 Stat. 102; Oct. 31, 1951, ch. 655, § 50(c), 65 Stat. 727; July 17, 1952, ch. 930, 66 Stat. 757; Pub. L. 86–726, §§ 1, 4, Sept. 8, 1960, 74 Stat. 855, 856; Pub. L. 91–577, title III, § 143(d), Dec. 24, 1970, 84 Stat. 1559; Pub. L. 94–553, title I, § 105(c), Oct. 19, 1976, 90 Stat. 2599; Pub. L. 97–164, title I, § 133(d), Apr. 2, 1982, 96 Stat. 40; Pub. L. 100–702, title X, § 1020(a)(6), Nov. 19, 1988, 102 Stat. 4671; Pub. L. 102–572, title IX, § 902(a), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 104–308, § 1(a), Oct. 19, 1996, 110 Stat. 3814; Pub. L. 105–147, § 3, Dec. 16, 1997, 111 Stat. 2680; Pub. L. 105–304, title V, § 503(d), Oct. 28, 1998, 112 Stat. 2917.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on section 68 of title 35, U.S.C., 1940 ed., Patents (June 25, 1910, ch. 423, 36 Stat. 851; July 1, 1918, ch. 114, 40 Stat. 705).

Provisions contained in the second proviso of section 68 of title 35, U.S.C., 1940 ed., relating to right of the United States to any general or special defense available to defendants in patent infringement suits were omitted as unnecessary. In the absence of statutory restriction, any defense available to a private party is equally available to the United States.

Changes in phraseology were made.

1949 ACT

This amendment clarifies section 1498 of title 28, U.S.C., by restating its first paragraph to conform more closely with the original law.

REFERENCES IN TEXT

Hereafter, referred to in subsec. (b), probably means the date of enactment of Pub. L. 86–726, which was approved on Sept. 8, 1960.

The copyright laws of the United States, referred to in subsec. (b), are classified generally to Title 17, Copyrights.

Hereafter, referred to in subsec. (d), probably means after the date of enactment of Pub. L. 91–577, which was approved on Dec. 24, 1970.

AMENDMENTS

1998—Subsec. (e). Pub. L. 105–304 inserted ", and to exclusive rights in designs under chapter 13 of title 17," after "title 17".

1997—Subsec. (b). Pub. L. 105–147, § 3, substituted "action which may be brought for such infringement shall be an action by the copyright owner" for "remedy of the owner of such copyright shall be by action".

1996—Subsec. (a). Pub. L. 104–308 inserted at end of first par. "Reasonable and entire compensation shall include the owner's reasonable costs, including reasonable fees for expert witnesses and attorneys, in pursuing the action if the owner is an independent inventor, a nonprofit organization, or an entity that had no more than 500 employees at any time during the 5-year period preceding the use or manufacture of the patented invention by or for the United States. Nothwithstanding the preceding sentences, unless the action has been pending for more than 10 years from the time of filing to the time that the owner applies for such costs and fees, reasonable and entire compensation shall not include such costs and fees if the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust."

1992—Subsec. (a). Pub. L. 102–572, § 902(a)(1), substituted "United States Court of Federal Claims" for "United States Claims Court".

Subsecs. (b), (d). Pub. L. 102–572, § 902(a)(2), substituted "Court of Federal Claims" for "Claims Court".

1988—Subsec. (e). Pub. L. 100–702 added subsec. (e).

1982—Subsec. (a). Pub. L. 97–168, § 133(d)(1), substituted "United States Claims Court" for "Court of Claims".

Subsecs. (b), (d). Pub. L. 97–164, § 133(d)(2), substituted "Claims Court" for "Court of Claims".

1976—Subsec. (b). Pub. L. 94–553 substituted "section 504(c) of title 17" for "section 101(b) of title 17".

1970—Subsec. (d). Pub. L. 91–577 added subsec. (d).

1960—Pub. L. 86–726, § 4, substituted "Patent and copyright cases" for "Patent cases" in section catchline.

Pub. L. 86–726, § 1, designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

1952—Act July 17, 1952, allowed Government employees to maintain patent suits against the United States in certain instances.

1951—Act Oct. 31, 1951, inserted second par.

1949—Act May 29, 1949, conformed first par. of section to original law.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1(b) of Pub. L. 104–308 provided that: "The amendment made by subsection (a) [amending this section] shall apply to actions under section 1498(a) of title 28, United States Code, that are pending on, or brought on or after, the date of the enactment of this Act [Oct. 19, 1996]."

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–164 effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as a note under section 171 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–553 effective Jan. 1, 1978, see section 102 of Pub. L. 94–553, set out as an Effective Date note preceding section 101 of Title 17, Copyrights.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–577 effective Dec. 24, 1970, see section 141 of Pub. L. 91–577, set out as an Effective Date note under section 2321 of Title 7, Agriculture.

WAIVER OF IMMUNITY FOR MEMBERS OF CONGRESS

Section 2 of Pub. L. 86–726 provided that: ''Nothing in this Act [amending this section and section 2386 of Title 10, Armed Forces] shall be construed to in any way waive any immunity provided for Members of Congress under article I of section 6 of the Constitution of the United States.''

§1499. Liquidated damages withheld from contractors under chapter 37 of title 40

The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim for liquidated damages withheld from a contractor or subcontractor under section 3703 of title 40.

(June 25, 1948, ch. 646, 62 Stat. 942; Pub. L. 87–581, title II, §202(a), Aug. 13, 1962, 76 Stat. 360; Pub. L. 97–164, title I, §133(e)(1), (2)(A), Apr. 2, 1982, 96 Stat. 40, 41; Pub. L. 101–650, title III, §325(b)(7), Dec. 1, 1990, 104 Stat. 5121; Pub. L. 102–572, title IX, §902(a)(1), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 107–217, §3(g)(3), Aug. 21, 2002, 116 Stat. 1299; Pub. L. 109–284, §4(2), Sept. 27, 2006, 120 Stat. 1211.)

HISTORICAL AND REVISION NOTES

Based on section 324 of title 40, U.S.C., 1940 ed., Public Buildings, Property and Works (June 19, 1912, ch. 174, §1, 37 Stat. 137).

This section contains only the jurisdictional provision in the last clause of section 324 of title 40, U.S.C., 1940 ed.

Changes in phraseology were made.

AMENDMENTS

2006—Pub. L. 109–284 substituted ''chapter 37 of title 40'' for ''Contract Work Hours and Safety Standards Act'' in section catchline.

2002—Pub. L. 107–217 substituted ''section 3703 of title 40'' for ''section 104 of the Contract Work Hours and Safety Standards Act''.

1992—Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1990—Pub. L. 101–650 substituted ''Hours and Safety Standards'' for ''Hours Standards'' in text.

1982—Pub. L. 97–164 substituted ''Contract Work Hours and Safety Standards Act'' for ''Contract Work Hours Standards Act'' in section catchline and ''United States Claims Court'' for ''Court of Claims'' in text.

1962—Pub. L. 87–581 amended section generally, substituting ''Liquidated damages withheld from contractors under Contract Work Hours Standards Act'' for ''Penalties imposed against contractors under eight hour law'' in section catchline, and ''liquidated damages withheld from a contractor or subcontractor under section 104 of the Contract Work Hours Standards Act'' for ''a penalty withheld from a contractor or subcontractor under section 324 of Title 40'' in text.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–164 effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as a note under section 171 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–581 effective 60 days after Aug. 13, 1962, but shall not affect contracts existing or thereafter entered into pursuant to invitations for bids outstanding on Aug. 13, 1962, see section 204 of Pub. L. 87–581, Aug. 13, 1962, 76 Stat. 360.

CONTINUED JURISDICTION UPON CLAIMS UNDER SECTION 324 OF FORMER TITLE 40

Pub. L. 87–581, title II, §202(b), Aug. 13, 1962, 76 Stat. 360, provided that the Court of Claims (now United States Court of Federal Claims) was to continue to have jurisdiction to render judgment upon certain claims for a penalty withheld from a contractor or subcontractor under section 324 of former Title 40, Public Buildings, Property, and Works, in connection with any contract subject to that section existing on the date sixty days after Aug. 13, 1962, or thereafter entered into pursuant to invitations for bids that were outstanding on Aug. 13, 1962.

§1500. Pendency of claims in other courts

The United States Court of Federal Claims shall not have jurisdiction of any claim for or in respect to which the plaintiff or his assignee has pending in any other court any suit or process against the United States or any person who, at the time when the cause of action alleged in such suit or process arose, was, in respect thereto, acting or professing to act, directly or indirectly under the authority of the United States.

(June 25, 1948, ch. 646, 62 Stat. 942; Pub. L. 97–164, title I, §133(e)(1), Apr. 2, 1982, 96 Stat. 40; Pub. L. 102–572, title IX, §902(a)(1), Oct. 29, 1992, 106 Stat. 4516.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §260 (Mar. 3, 1911, ch. 231, §154, 36 Stat. 1138).

Words ''or in the Supreme Court on appeal therefrom'' were omitted as unnecessary.

Changes were made in phraseology.

AMENDMENTS

1992—Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1982—Pub. L. 97–164 substituted ''United States Claims Court'' for ''Court of Claims''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–164 effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as a note under section 171 of this title.

§1501. Pensions

The United States Court of Federal Claims shall not have jurisdiction of any claim for a pension.

(June 25, 1948, ch. 646, 62 Stat. 942; Pub. L. 97–164, title I, §133(e)(1), Apr. 2, 1982, 96 Stat. 40; Pub. L. 102–572, title IX, §902(a)(1), Oct. 29, 1992, 106 Stat. 4516.)