States patent for an invention if that person, or his successors, assigns, or legal representatives shall, without procuring the license prescribed in section 184 of this title, have made, or consented to or assisted another's making, application in a foreign country for a patent or for the registration of a utility model, industrial design, or model in respect of the invention. A United States patent issued to such person, his successors, assigns, or legal representatives shall be invalid, unless the failure to procure such license was through error and without deceptive intent, and the patent does not disclose subject matter within the scope of section 181 of this title.

(July 19, 1952, ch. 950, 66 Stat. 807; Pub. L. 100–418, title IX, §9101(b)(2), Aug. 23, 1988, 102 Stat. 1568; Pub. L. 107–273, div. C, title III, §13206(a)(11), Nov. 2, 2002, 116 Stat. 1904.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §155 (Feb. 1, 1952, ch. 4, §5, 66 Stat. 5).
Language is changed.

AMENDMENTS

2002—Pub. L. 107–273 struck out second period at end.
1988—Pub. L. 100–418 inserted before period at end ", unless the failure to procure such license was through error and without deceptive intent, and the patent does not disclose subject matter within the scope of section 181 of this title."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–418 applicable, subject to certain qualifications and exceptions, to all United States patents, and to all licenses under section 184 of this title, regardless of the date such patents or licenses are granted, and to all applications for such patents pending on or filed after Aug. 23, 1988, see section 9101(d) of Pub. L. 100–418, set out as a note under section 184 of this title.

§ 186. Penalty

Whoever, during the period or periods of time an invention has been ordered to be kept secret and the grant of a patent thereon withheld pursuant to section 181 of this title, shall, with knowledge of such order and without due authorization, willfully publish or disclose or authorize or cause to be published or disclosed the invention, or material information with respect thereto, or whoever willfully, in violation of the provisions of section 184 of this title, shall file or cause or authorize to be filed in any foreign country an application for patent or for the registration of a utility model, industrial design, or model in respect of any invention made in the United States, shall, upon conviction, be fined not more than $10,000 or imprisoned for not more than two years, or both.

(July 19, 1952, ch. 950, 66 Stat. 807; Pub. L. 100–418, title IX, §9101(b)(3), Aug. 23, 1988, 102 Stat. 1568.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §156 (Feb. 1, 1952, ch. 4, §6, 66 Stat. 5, 6).
Language is changed.

AMENDMENTS

1988—Pub. L. 100–418, which directed the insertion of "willfully" after second reference to "whoever", was executed by making the insertion after "or whoever", as the probable intent of Congress.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–418 applicable, subject to certain qualifications and exceptions, to all United States patents, and to all licenses under section 184 of this title, regardless of the date such patents or licenses are granted, and to all applications for such patents pending on or filed after Aug. 23, 1988, see section 9101(d) of Pub. L. 100–418, set out as a note under section 184 of this title.

§ 187. Nonapplicability to certain persons

The prohibitions and penalties of this chapter shall not apply to any officer or agent of the United States acting within the scope of his authority, nor to any person acting upon his written instructions or permission.

(July 19, 1952, ch. 950, 66 Stat. 808.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §157 (Feb. 1, 1952, ch. 4, §7, 66 Stat. 6).
Language is changed.

§ 188. Rules and regulations, delegation of power

The Atomic Energy Commission, the Secretary of a defense department, the chief officer of any other department or agency of the Government designated by the President as a defense agency of the United States, and the Secretary of Commerce, may separately issue rules and regulations to enable the respective department or agency to carry out the provisions of this chapter, and may delegate any power conferred by this chapter.

(July 19, 1952, ch. 950, 66 Stat. 808.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., §158 (Feb. 1, 1952, ch. 4, §8, 66 Stat. 6).
Language is changed.

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of Title 42, The Public Health and Welfare. See, also, Transfer of Functions notes set out under those sections.

DEFENSE AGENCIES

Department of Justice designated as a defense agency of United States for purposes of this chapter by Executive Order No. 10457, May 27, 1953, 18 F.R. 3083.

CHAPTER 18—PATENT RIGHTS IN INVENTIONS MADE WITH FEDERAL ASSISTANCE

Sec.
200. Policy and objective.
201. Definitions.
202. Disposition of rights.
203. March-in rights.
204. Preference for United States industry.
205. Confidentiality.
206. Uniform clauses and regulations.
207. Domestic and foreign protection of federally owned inventions.
208. Regulations governing Federal licensing.
209. Licensing federally owned inventions.
210. Precedence of chapter.
211. Relationship to antitrust laws.
212. Disposition of rights in educational awards.

AMENDMENTS

2000—Pub. L. 106–404, §4(b), Nov. 1, 2000, 114 Stat. 1744, substituted "Licensing federally owned inventions" for

''Restrictions on licensing of federally owned inventions'' in item 209.

1984—Pub. L. 98–620, title V, §501(15), Nov. 8, 1984, 98 Stat. 3368, added item 212.

1982—Pub. L. 97–256, title I, §101(5), Sept. 8, 1982, 96 Stat. 816, redesignated chapter 38, as added by Pub. L. 96–517, §6(a), Dec. 12, 1980, 94 Stat. 3018, comprising sections 200 to 211, as chapter 18, and transferred chapter 18, as so redesignated, to end of this part from end of part IV.

§200. Policy and objective

It is the policy and objective of the Congress to use the patent system to promote the utilization of inventions arising from federally supported research or development; to encourage maximum participation of small business firms in federally supported research and development efforts; to promote collaboration between commercial concerns and nonprofit organizations, including universities; to ensure that inventions made by nonprofit organizations and small business firms are used in a manner to promote free competition and enterprise without unduly encumbering future research and discovery; to promote the commercialization and public availability of inventions made in the United States by United States industry and labor; to ensure that the Government obtains sufficient rights in federally supported inventions to meet the needs of the Government and protect the public against nonuse or unreasonable use of inventions; and to minimize the costs of administering policies in this area.

(Added Pub. L. 96–517, §6(a), Dec. 12, 1980, 94 Stat. 3018; amended Pub. L. 106–404, §5, Nov. 1, 2000, 114 Stat. 1745.)

AMENDMENTS

2000—Pub. L. 106–404 substituted ''enterprise without unduly encumbering future research and discovery;'' for ''enterprise;''.

EFFECTIVE DATE

Chapter effective July 1, 1981, but implementing regulations authorized to be issued earlier, see section 8(f) of Pub. L. 96–517, set out as an Effective Date of 1980 Amendment note under section 41 of this title.

SHORT TITLE

This chapter is popularly known as the Bayh-Dole Act. Section 6(a) of Pub. L. 96–517, Dec. 12, 1980, 94 Stat. 3018, which enacted this chapter, is also popularly known as the Bayh-Dole Act and also as the University and Small Business Patent Procedures Act of 1980. For complete classification of section 6(a) of Pub. L. 96–517 to the Code, see Tables.

§201. Definitions

As used in this chapter—

(a) The term ''Federal agency'' means any executive agency as defined in section 105 of title 5, and the military departments as defined by section 102 of title 5.

(b) The term ''funding agreement'' means any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal Government. Such term includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as herein defined.

(c) The term ''contractor'' means any person, small business firm, or nonprofit organization that is a party to a funding agreement.

(d) The term ''invention'' means any invention or discovery which is or may be patentable or otherwise protectable under this title or any novel variety of plant which is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).

(e) The term ''subject invention'' means any invention of the contractor conceived or first actually reduced to practice in the performance of work under a funding agreement: *Provided*, That in the case of a variety of plant, the date of determination (as defined in section 41(d)[1] of the Plant Variety Protection Act (7 U.S.C. 2401(d))) must also occur during the period of contract performance.

(f) The term ''practical application'' means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are to the extent permitted by law or Government regulations available to the public on reasonable terms.

(g) The term ''made'' when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(h) The term ''small business firm'' means a small business concern as defined at section 2 of Public Law 85–536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration.

(i) The term ''nonprofit organization'' means universities and other institutions of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

(Added Pub. L. 96–517, §6(a), Dec. 12, 1980, 94 Stat. 3019; amended Pub. L. 98–620, title V, §501(1), (2), Nov. 8, 1984, 98 Stat. 3364; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 107–273, div. C, title III, §13206(a)(12), Nov. 2, 2002, 116 Stat. 1904.)

REFERENCES IN TEXT

The Plant Variety Protection Act, referred to in subsec. (d), is Pub. L. 91–577, Dec. 24, 1970, 84 Stat. 1542, as amended, which is classified principally to chapter 57 (§2321 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2321 of Title 7 and Tables.

Section 41 of the Plant Variety Protection Act (7 U.S.C. 2401(d)), referred to in subsec. (e), was subsequently amended, and no longer defines the term ''date of determination''.

[1] See References in Text note below.