§ 209. Licensing federally owned inventions

(a) AUTHORITY.—A Federal agency may grant an exclusive or partially exclusive license on a federally owned invention under section 207(a)(2) only if—

(1) granting the license is a reasonable and necessary incentive to—

(A) call forth the investment capital and expenditures needed to bring the invention to practical application; or

(B) otherwise promote the invention's utilization by the public;

(2) the Federal agency finds that the public will be served by the granting of the license, as indicated by the applicant's intentions, plans, and ability to bring the invention to practical application or otherwise promote the invention's utilization by the public, and that the proposed scope of exclusivity is not greater than reasonably necessary to provide the incentive for bringing the invention to practical application, as proposed by the applicant, or otherwise to promote the invention's utilization by the public;

(3) the applicant makes a commitment to achieve practical application of the invention within a reasonable time, which time may be extended by the agency upon the applicant's request and the applicant's demonstration that the refusal of such extension would be unreasonable;

(4) granting the license will not tend to substantially lessen competition or create or maintain a violation of the Federal antitrust laws; and

(5) in the case of an invention covered by a foreign patent application or patent, the interests of the Federal Government or United States industry in foreign commerce will be enhanced.

(b) MANUFACTURE IN UNITED STATES.—A Federal agency shall normally grant a license under section 207(a)(2) to use or sell any federally owned invention in the United States only to a licensee who agrees that any products embodying the invention or produced through the use of the invention will be manufactured substantially in the United States.

(c) SMALL BUSINESS.—First preference for the granting of any exclusive or partially exclusive licenses under section 207(a)(2) shall be given to small business firms having equal or greater likelihood as other applicants to bring the invention to practical application within a reasonable time.

(d) TERMS AND CONDITIONS.—Any licenses granted under section 207(a)(2) shall contain such terms and conditions as the granting agency considers appropriate, and shall include provisions—

(1) retaining a nontransferrable, irrevocable, paid-up license for any Federal agency to practice the invention or have the invention practiced throughout the world by or on behalf of the Government of the United States;

(2) requiring periodic reporting on utilization of the invention, and utilization efforts, by the licensee, but only to the extent necessary to enable the Federal agency to determine whether the terms of the license are being complied with, except that any such report shall be treated by the Federal agency as commercial and financial information obtained from a person and privileged and confidential and not subject to disclosure under section 552 of title 5; and

(3) empowering the Federal agency to terminate the license in whole or in part if the agency determines that—

(A) the licensee is not executing its commitment to achieve practical application of the invention, including commitments contained in any plan submitted in support of its request for a license, and the licensee cannot otherwise demonstrate to the satisfaction of the Federal agency that it has taken, or can be expected to take within a reasonable time, effective steps to achieve practical application of the invention;

(B) the licensee is in breach of an agreement described in subsection (b);

(C) termination is necessary to meet requirements for public use specified by Federal regulations issued after the date of the license, and such requirements are not reasonably satisfied by the licensee; or

(D) the licensee has been found by a court of competent jurisdiction to have violated the Federal antitrust laws in connection with its performance under the license agreement.

(e) PUBLIC NOTICE.—No exclusive or partially exclusive license may be granted under section 207(a)(2) unless public notice of the intention to grant an exclusive or partially exclusive license on a federally owned invention has been provided in an appropriate manner at least 15 days before the license is granted, and the Federal agency has considered all comments received before the end of the comment period in response to that public notice. This subsection shall not apply to the licensing of inventions made under a cooperative research and development agreement entered into under section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a).

(f) PLAN.—No Federal agency shall grant any license under a patent or patent application on a federally owned invention unless the person requesting the license has supplied the agency with a plan for development or marketing of the invention, except that any such plan shall be treated by the Federal agency as commercial and financial information obtained from a person and privileged and confidential and not subject to disclosure under section 552 of title 5.

(Added Pub. L. 96–517, § 6(a), Dec. 12, 1980, 94 Stat. 3024; amended Pub. L. 106–404, § 4(a), Nov. 1, 2000, 114 Stat. 1743; Pub. L. 107–273, div. C, title III, § 13206(a)(15), Nov. 2, 2002, 116 Stat. 1905.)

AMENDMENTS

2002—Subsecs. (d)(2), (f). Pub. L. 107–273 struck out ''of the United States Code'' after ''title 5''.

2000—Pub. L. 106–404 amended section catchline and text generally, restructuring and revising provisions setting forth criteria, terms, and conditions relating to granting of licenses on federally owned inventions.

§ 210. Precedence of chapter

(a) This chapter shall take precedence over any other Act which would require a disposition

of rights in subject inventions of small business firms or nonprofit organizations contractors in a manner that is inconsistent with this chapter, including but not necessarily limited to the following:

(1) section 10(a) of the Act of June 29, 1935, as added by title I of the Act of August 14, 1946 (7 U.S.C. 427i(a); 60 Stat. 1085);

(2) section 205(a) of the Act of August 14, 1946 (7 U.S.C. 1624(a); 60 Stat. 1090);

(3) section 501(c) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 951(c); 83 Stat. 742);

(4) section 30168(e) of title 49;

(5) section 12 of the National Science Foundation Act of 1950 (42 U.S.C. 1871(a);[1] 82 Stat. 360);

(6) section 152 of the Atomic Energy Act of 1954 (42 U.S.C. 2182; 68 Stat. 943);

(7) section 305 of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457);

(8) section 6 of the Coal Research and Development Act of 1960 (30 U.S.C. 666; 74 Stat. 337);

(9) section 4 of the Helium Act Amendments of 1960 (50 U.S.C. 167b; 74 Stat. 920);

(10) section 32 of the Arms Control and Disarmament Act of 1961 (22 U.S.C. 2572; 75 Stat. 634);

(11) section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908; 88 Stat. 1878);

(12) section 5(d) of the Consumer Product Safety Act (15 U.S.C. 2054(d); 86 Stat. 1211);

(13) section 3 of the Act of April 5, 1944 (30 U.S.C. 323; 58 Stat. 191);[1]

(14) section 8001(c)(3) of the Solid Waste Disposal Act (42 U.S.C. 6981(c); 90 Stat. 2829);

(15) section 219 of the Foreign Assistance Act of 1961 (22 U.S.C. 2179; 83 Stat. 806);

(16) section 427(b) of the Federal Mine Health and Safety Act of 1977 (30 U.S.C. 937(b); 86 Stat. 155);

(17) section 306(d) of the Surface Mining and Reclamation Act of 1977 (30 U.S.C. 1226(d); 91 Stat. 455);[1]

(18) section 21(d) of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2218(d); 88 Stat. 1548);

(19) section 6(b) of the Solar Photovoltaic Energy Research Development and Demonstration Act of 1978 (42 U.S.C. 5585(b); 92 Stat. 2516);

(20) section 12 of the Native Latex Commercialization and Economic Development Act of 1978 (7 U.S.C. 178j; 92 Stat. 2533); and

(21) section 408 of the Water Resources and Development Act of 1978 (42 U.S.C. 7879; 92 Stat. 1360).

The Act creating this chapter shall be construed to take precedence over any future Act unless that Act specifically cites this Act and provides that it shall take precedence over this Act.

(b) Nothing in this chapter is intended to alter the effect of the laws cited in paragraph (a) of this section or any other laws with respect to the disposition of rights in inventions made in the performance of funding agreements with persons other than nonprofit organizations or small business firms.

[1] See References in Text note below.

(c) Nothing in this chapter is intended to limit the authority of agencies to agree to the disposition of rights in inventions made in the performance of work under funding agreements with persons other than nonprofit organizations or small business firms in accordance with the Statement of Government Patent Policy issued on February 18, 1983, agency regulations, or other applicable regulations or to otherwise limit the authority of agencies to allow such persons to retain ownership of inventions except that all funding agreements, including those with other than small business firms and nonprofit organizations, shall include the requirements established in section 202(c)(4) and section 203 of this title. Any disposition of rights in inventions made in accordance with the Statement or implementing regulations, including any disposition occurring before enactment of this section, are hereby authorized.

(d) Nothing in this chapter shall be construed to require the disclosure of intelligence sources or methods or to otherwise affect the authority granted to the Director of Central Intelligence by statute or Executive order for the protection of intelligence sources or methods.

(e) The provisions of the Stevenson-Wydler Technology Innovation Act of 1980 shall take precedence over the provisions of this chapter to the extent that they permit or require a disposition of rights in subject inventions which is inconsistent with this chapter.

(Added Pub. L. 96–517, § 6(a), Dec. 12, 1980, 94 Stat. 3026; amended Pub. L. 98–620, title V, § 501(13), Nov. 8, 1984, 98 Stat. 3367; Pub. L. 99–502, § 9(c), Oct. 20, 1986, 100 Stat. 1796; Pub. L. 103–272, § 5(j), July 5, 1994, 108 Stat. 1375; Pub. L. 104–113, § 7, Mar. 7, 1996, 110 Stat. 779; Pub. L. 105–393, title II, § 220(c)(2), Nov. 13, 1998, 112 Stat. 3625; Pub. L. 107–273, div. C, title III, § 13206(a)(16), Nov. 2, 2002, 116 Stat. 1905; Pub. L. 109–58, title X, § 1009(a)(2), Aug. 8, 2005, 119 Stat. 934.)

REFERENCES IN TEXT

The Act and this Act, referred to in subsec. (a), is Pub. L. 96–517, Dec. 12, 1980, 94 Stat. 3015, which enacted sections 200 to 211 and 301 to 307 of this title, amended sections 41, 42, and 154 of this title, section 1113 of Title 15, Commerce and Trade, sections 101 and 117 of Title 17, Copyrights, and sections 2186, 2457, and 5908 of Title 42, The Public Health and Welfare, and enacted provisions set out as notes under sections 13 and 41 of this title. For complete classification of this Act to the Code, see Tables.

Section 12 of the National Science Foundation Act of 1950 (42 U.S.C. 1871(a); 82 Stat. 360), referred to in subsec. (a)(5), was amended by Pub. L. 99–159, title I, § 109(c), Nov. 22, 1985, 99 Stat. 889, by striking out subsec. (b) and designating subsec. (a) as the entire section.

Section 3 of the Act of April 5, 1944 (30 U.S.C. 323; 58 Stat. 191), referred to in subsec. (a)(13), was omitted from the Code.

Section 306(d) of the Surface Mining and Reclamation Act, referred to in subsec. (a)(17), was classified to section 1226(d) of Title 30, Mineral Lands and Mining, prior to enactment of Pub. L. 98–409, which enacted a new section 1226 of Title 30. See section 1226(c) of Title 30.

The Native Latex Commercialization and Economic Development Act of 1978, referred to in subsec. (a)(20), is Pub. L. 95–592, Nov. 4, 1978, 92 Stat. 2529, as amended, which, as amended by Pub. L. 98–284, May 16, 1984, 98 Stat. 181, is known as the Critical Agricultural Materials Act and is classified principally to subchapter II

(§ 178 et seq.) of chapter 8A of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 178 of Title 7 and Tables.

Section 408 of the Water Resources and Development Act of 1978 (42 U.S.C. 7879; 92 Stat. 1360), referred to in subsec. (a)(21), was repealed by Pub. L. 98–242, title I, § 110(a), Mar. 22, 1984, 98 Stat. 101. See section 10308 of Title 42, The Public Health and Welfare.

The Stevenson-Wydler Technology Innovation Act of 1980, referred to in subsec. (e), is Pub. L. 96–480, Oct. 21, 1980, 94 Stat. 2311, as amended, which is classified generally to chapter 63 (§ 3701 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 3701 of Title 15 and Tables.

AMENDMENTS

2005—Subsec. (a)(8). Pub. L. 109–58 substituted ''Coal Research and Development Act of 1960'' for ''Coal Research Development Act of 1960''.

2002—Subsec. (a)(11). Pub. L. 107–273, § 13206(a)(16)(A)(i), substituted ''5908'' for ''5901''.

Subsec. (a)(20). Pub. L. 107–273, § 13206(a)(16)(A)(ii), substituted ''178j'' for ''178(j)''.

Subsec. (c). Pub. L. 107–273, § 13206(a)(16)(B), substituted ''section 202(c)(4)'' for ''paragraph 202(c)(4)'' and struck out second period after ''title''.

1998—Subsec. (a)(11) to (22). Pub. L. 105–393 redesignated pars. (12) to (22) as (11) to (21), respectively, and struck out former par. (11) which read as follows: ''subsection (e) of section 302 of the Appalachian Regional Development Act of 1965 (40 U.S.C. App. 302(e); 79 Stat. 5);''.

1996—Subsec. (e). Pub. L. 104–113 struck out '', as amended by the Federal Technology Transfer Act of 1986,'' after ''1980''.

1994—Subsec. (a)(4). Pub. L. 103–272 substituted ''section 30168(e) of title 49'' for ''section 106(c) of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1395(c); 80 Stat. 721)''.

1986—Subsec. (e). Pub. L. 99–502 added subsec. (e).

1984—Subsec. (c). Pub. L. 98–620 substituted ''February 18, 1983'' for ''August 23, 1971 (36 Fed. Reg. 16887)'' and inserted provision that all funding agreements, including those with other than small business firms and nonprofit organizations, shall include the requirements established in paragraph 202(c)(4) and section 203 of this title.

CHANGE OF NAME

Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108–458, set out as a note under section 401 of Title 50, War and National Defense.

§ 211. Relationship to antitrust laws

Nothing in this chapter shall be deemed to convey to any person immunity from civil or criminal liability, or to create any defenses to actions, under any antitrust law.

(Added Pub. L. 96–517, § 6(a), Dec. 12, 1980, 94 Stat. 3027.)

§ 212. Disposition of rights in educational awards

No scholarship, fellowship, training grant, or other funding agreement made by a Federal agency primarily to an awardee for educational purposes will contain any provision giving the Federal agency any rights to inventions made by the awardee.

(Added Pub. L. 98–620, title V, § 501(14), Nov. 8, 1984, 98 Stat. 3368.)

PART III—PATENTS AND PROTECTION OF PATENT RIGHTS

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AMENDMENTS

2002—Pub. L. 107–273, div. C, title III, § 13206(a)(17), Nov. 2, 2002, 116 Stat. 1905, inserted a comma after ''Patent'' in item for chapter 29.

1999—Pub. L. 106–113, div. B, § 1000(a)(9) [title IV, § 4604(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–570, as amended by Pub. L. 107–273, div. C, title III, § 13202(c)(2), Nov. 2, 2002, 116 Stat. 1902, substituted ''Ex Parte Reexamination of Patents'' for ''Reexamination of Patents'' in item for chapter 30 and added item for chapter 31.

1982—Pub. L. 97–256, title I, § 101(7), Sept. 8, 1982, 96 Stat. 816, added item for chapter 30.

CHAPTER 25—AMENDMENT AND CORRECTION OF PATENTS

Sec.
251. Reissue of defective patents.
252. Effect of reissue.
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254. Certificate of correction of Patent and Trademark Office mistake.
255. Certificate of correction of applicant's mistake.
256. Correction of named inventor.

AMENDMENTS

2002—Pub. L. 107–273, div. C, title III, § 13206(a)(18), Nov. 2, 2002, 116 Stat. 1905, substituted ''Correction of named inventor'' for ''Misjoinder of inventor'' in item 256.

1975—Pub. L. 93–596, § 1, Jan. 2, 1975, 88 Stat. 1949, substituted ''Patent and Trademark Office'' for ''Patent Office'' in item 254.

§ 251. Reissue of defective patents

Whenever any patent is, through error without any deceptive intention, deemed wholly or partly inoperative or invalid, by reason of a defective specification or drawing, or by reason of the patentee claiming more or less than he had a right to claim in the patent, the Director shall, on the surrender of such patent and the payment of the fee required by law, reissue the patent for the invention disclosed in the original patent, and in accordance with a new and amended application, for the unexpired part of the term of the original patent. No new matter shall be introduced into the application for reissue.

[1] So in original. Does not conform to chapter heading.