1975—Pub. L. 93–596 substituted ''Patent and Trademark Office'' for ''Patent Office''.

1972—Pub. L. 92–358 inserted last paragraph providing that under certain circumstances, applications for inventors' certificate filed in a foreign country would be given the same priority as applications for patents, if the applicants are entitled to the benefits of the Stockholm Revision of the Paris Convention at the time of filing.

1961—Pub. L. 87–333 authorized the right provided by this section to be based upon a subsequent application in the same foreign country, instead of the first application, provided that any foreign application filed prior to such subsequent one was withdrawn, or otherwise disposed of, without having been open to public inspection and without leaving any rights outstanding, nor any basis for claiming priority.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 1000(a)(9) [title IV, §4503(a), (b)(2)] of Pub. L. 106–113 effective Nov. 29, 2000, and applicable only to applications (including international applications designating the United States) filed on or after that date, see section 1000(a)(9) [title IV, §4508] of Pub. L. 106–113, as amended, set out as a note under section 10 of this title.

Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4801(d)], Nov. 29, 1999, 113 Stat. 1536, 1501A–589, provided that: ''The amendments made by this section [amending this section and section 111 of this title] shall take effect on the date of the enactment of this Act [Nov. 29, 1999] and shall apply to any provisional application filed on or after June 8, 1995, except that the amendments made by subsections (b) and (c) [amending this section] shall have no effect with respect to any patent which is the subject of litigation in an action commenced before such date of enactment.''

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 1975 AMENDMENT

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of Title 15, Commerce and Trade.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 3(a) of Pub. L. 92–358 provided that: ''Section 1 of this Act [amending this section] shall take effect on the date when Articles 1–12 of the Paris Convention of March 20, 1883, for the Protection of Industrial Property, as revised at Stockholm, July 14, 1967, come into force with respect to the United States [Aug. 25, 1973] and shall apply only to applications thereafter filed in the United States.''

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–333 effective on the date when the Convention of Paris for the Protection of Industrial Property of March 20, 1883, as revised at Lisbon, Oct. 31, 1958, comes into force with respect to the United States [Jan. 4, 1962] and shall apply only to applications thereafter filed in the United States by persons entitled to the benefit of said convention, as revised at the time of such filing, see section 3 of Pub. L. 87–333, set out as a note under section 1126 of Title 15, Commerce and Trade.

JAPANESE AND CERTAIN GERMAN NATIONALS; TEMPORARY EXTENSION OF PRIORITY RIGHTS

Act Aug. 23, 1954, ch. 823, 68 Stat. 764, provided that the priority rights specified in section 101 of former Title 35, Patents, which arose before Apr. 1, 1950, were extended, with respect to inventions made subsequent to Jan. 1, 1946, in favor of certain Japanese and German nationals, to a date nine months after Aug. 23, 1954, subject to conditions and limitations specified in sections 104, 110, 112, and 114 of former title 35.

§120. Benefit of earlier filing date in the United States

An application for patent for an invention disclosed in the manner provided by the first paragraph of section 112 of this title in an application previously filed in the United States, or as provided by section 363 of this title, which is filed by an inventor or inventors named in the previously filed application shall have the same effect, as to such invention, as though filed on the date of the prior application, if filed before the patenting or abandonment of or termination of proceedings on the first application or on an application similarly entitled to the benefit of the filing date of the first application and if it contains or is amended to contain a specific reference to the earlier filed application. No application shall be entitled to the benefit of an earlier filed application under this section unless an amendment containing the specific reference to the earlier filed application is submitted at such time during the pendency of the application as required by the Director. The Director may consider the failure to submit such an amendment within that time period as a waiver of any benefit under this section. The Director may establish procedures, including the payment of a surcharge, to accept an unintentionally delayed submission of an amendment under this section.

(July 19, 1952, ch. 950, 66 Stat. 800; Pub. L. 94–131, §9, Nov. 14, 1975, 89 Stat. 691; Pub. L. 98–622, title I, §104(b), Nov. 8, 1984, 98 Stat. 3385; Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4503(b)(1)], Nov. 29, 1999, 113 Stat. 1536, 1501A–563.)

HISTORICAL AND REVISION NOTES

This section represents present law not expressed in the statute, except for the added requirement that the first application must be specifically mentioned in the second.

AMENDMENTS

1999—Pub. L. 106–113 inserted at end ''No application shall be entitled to the benefit of an earlier filed application under this section unless an amendment containing the specific reference to the earlier filed application is submitted at such time during the pendency of the application as required by the Director. The Director may consider the failure to submit such an amendment within that time period as a waiver of any benefit under this section. The Director may establish procedures, including the payment of a surcharge, to accept an unintentionally delayed submission of an amendment under this section.''

1984—Pub. L. 98–622 substituted ''which is filed by an inventor or inventors named in the previously filed application'' for ''by the same inventor''.

1975—Pub. L. 94–131 inserted '', or as provided by section 363 of this title,'' after ''filed in the United States''.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 effective Nov. 29, 2000, and applicable only to applications (including international applications designating the United States) filed on or after that date, see section 1000(a)(9) [title IV, §4508] of Pub. L. 106–113, as amended, set out as a note under section 10 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–622 applicable to all United States patents granted before, on, or after Nov. 8, 1984, and to all applications for United States patents pending on or filed after that date, except as otherwise provided, see section 106 of Pub. L. 98–622, set out as a note under section 103 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–131 effective Jan. 24, 1978, and applicable on and after that date to patent applications filed in the United States and to international applications, where applicable, see section 11 of Pub. L. 94–131, set out as an Effective Date note under section 351 of this title.

§ 121. Divisional applications

If two or more independent and distinct inventions are claimed in one application, the Director may require the application to be restricted to one of the inventions. If the other invention is made the subject of a divisional application which complies with the requirements of section 120 of this title it shall be entitled to the benefit of the filing date of the original application. A patent issuing on an application with respect to which a requirement for restriction under this section has been made, or on an application filed as a result of such a requirement, shall not be used as a reference either in the Patent and Trademark Office or in the courts against a divisional application or against the original application or any patent issued on either of them, if the divisional application is filed before the issuance of the patent on the other application. If a divisional application is directed solely to subject matter described and claimed in the original application as filed, the Director may dispense with signing and execution by the inventor. The validity of a patent shall not be questioned for failure of the Director to require the application to be restricted to one invention.

(July 19, 1952, ch. 950, 66 Stat. 800; Pub. L. 93–596, § 1, Jan. 2, 1975, 88 Stat. 1949; 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.)

HISTORICAL AND REVISION NOTES

This section enacts as law existing practice with respect to division, at the same time introducing a number of changes. Division is made discretionary with the Commissioner. The requirements of section 120 are made applicable and neither of the resulting patents can be held invalid over the other merely because of their being divided in several patents. In some cases a divisional application may be filed by the assignee.

AMENDMENTS

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

1999—Pub. L. 106–113, as amended by Pub. L. 107–273, substituted ''Director'' for ''Commissioner'' wherever appearing.

1975—Pub. L. 93–596 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 1975 AMENDMENT

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of Title 15, Commerce and Trade.

§ 122. Confidential status of applications; publication of patent applications

(a) CONFIDENTIALITY.—Except as provided in subsection (b), applications for patents shall be kept in confidence by the Patent and Trademark Office and no information concerning the same given without authority of the applicant or owner unless necessary to carry out the provisions of an Act of Congress or in such special circumstances as may be determined by the Director.

(b) PUBLICATION.—

(1) IN GENERAL.—(A) Subject to paragraph (2), each application for a patent shall be published, in accordance with procedures determined by the Director, promptly after the expiration of a period of 18 months from the earliest filing date for which a benefit is sought under this title. At the request of the applicant, an application may be published earlier than the end of such 18-month period.

(B) No information concerning published patent applications shall be made available to the public except as the Director determines.

(C) Notwithstanding any other provision of law, a determination by the Director to release or not to release information concerning a published patent application shall be final and nonreviewable.

(2) EXCEPTIONS.—(A) An application shall not be published if that application is—

(i) no longer pending;

(ii) subject to a secrecy order under section 181 of this title;

(iii) a provisional application filed under section 111(b) of this title; or

(iv) an application for a design patent filed under chapter 16 of this title.

(B)(i) If an applicant makes a request upon filing, certifying that the invention disclosed in the application has not and will not be the subject of an application filed in another country, or under a multilateral international agreement, that requires publication of applications 18 months after filing, the application shall not be published as provided in paragraph (1).

(ii) An applicant may rescind a request made under clause (i) at any time.

(iii) An applicant who has made a request under clause (i) but who subsequently files, in a foreign country or under a multilateral international agreement specified in clause (i), an application directed to the invention disclosed in the application filed in the Patent and Trademark Office, shall notify the Director of such filing not later than 45 days after the date of the filing of such foreign or international application. A failure of the applicant to provide such notice within the prescribed period shall result in the application being regarded as abandoned, unless it is shown to the satisfaction of the Director that the delay in submitting the notice was unintentional.

(iv) If an applicant rescinds a request made under clause (i) or notifies the Director that