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

an application was filed in a foreign country or under a multilateral international agreement specified in clause (i), the application shall be published in accordance with the provisions of paragraph (1) on or as soon as is practical after the date that is specified in clause (i).

(v) If an applicant has filed applications in one or more foreign countries, directly or through a multilateral international agreement, and such foreign filed applications corresponding to an application filed in the Patent and Trademark Office or the description of the invention in such foreign filed applications is less extensive than the application or description of the invention in the application filed in the Patent and Trademark Office, the applicant may submit a redacted copy of the application filed in the Patent and Trademark Office eliminating any part or description of the invention in such application that is not also contained in any of the corresponding applications filed in a foreign country. The Director may only publish the redacted copy of the application unless the redacted copy of the application is not received within 16 months after the earliest effective filing date for which a benefit is sought under this title. The provisions of section 154(d) shall not apply to a claim if the description of the invention published in the redacted application filed under this clause with respect to the claim does not enable a person skilled in the art to make and use the subject matter of the claim.

(c) PROTEST AND PRE-ISSUANCE OPPOSITION.—The Director shall establish appropriate procedures to ensure that no protest or other form of pre-issuance opposition to the grant of a patent on an application may be initiated after publication of the application without the express written consent of the applicant.

(d) NATIONAL SECURITY.—No application for patent shall be published under subsection (b)(1) if the publication or disclosure of such invention would be detrimental to the national security. The Director shall establish appropriate procedures to ensure that such applications are promptly identified and the secrecy of such inventions is maintained in accordance with chapter 17 of this title.

(July 19, 1952, ch. 950, 66 Stat. 801; Pub. L. 93–596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4502(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A–561.)

HISTORICAL AND REVISION NOTES

This section enacts the Patent Office rule of secrecy of applications.

AMENDMENTS

1999—Pub. L. 106–113 amended section catchline and text generally. Prior to amendment, text read as follows: ''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 any Act of Congress or in such special circumstances as may be determined by the Commissioner.''

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

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by 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, and applications published pursuant to subsec. (b) of this section resulting from an international application filed before Nov. 29, 2000 not to be effective as prior art as of the filing date of the international application, but to be effective as prior art in accordance with section 102(e) of this title in effect on Nov. 28, 2000, 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 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.

STUDY OF APPLICANTS FILING ONLY IN UNITED STATES

Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4502(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–562, provided that:

''(1) IN GENERAL.—The Comptroller General shall conduct a 3-year study of the applicants who file only in the United States on or after the effective date of this subtitle [see section 1000(a)(9) [title IV, §4508] of Pub. L. 106–113, set out as an Effective Date of 1999 Amendment note under section 10 of this title] and shall provide the results of such study to the Judiciary Committees of the House of Representatives and the Senate.

''(2) CONTENTS.—The study conducted under paragraph (1) shall—

''(A) consider the number of such applicants in relation to the number of applicants who file in the United States and outside of the United States;

''(B) examine how many domestic-only filers request at the time of filing not to be published;

''(C) examine how many such filers rescind that request or later choose to file abroad;

''(D) examine the status of the entity seeking an application and any correlation that may exist between such status and the publication of patent applications; and

''(E) examine the abandonment/issuance ratios and length of application pendency before patent issuance or abandonment for published versus unpublished applications.''

CHAPTER 12—EXAMINATION OF APPLICATION

Sec.
131. Examination of application.
132. Notice of rejection; reexamination.
133. Time for prosecuting application.
134. Appeal to the Board of Patent Appeals and Interferences.
135. Interferences.

AMENDMENTS

1984—Pub. L. 98–622, title II, §204(b)(2), Nov. 8, 1984, 98 Stat. 3388, substituted ''Patent Appeals and Interferences'' for ''Appeals'' in item 134.

§131. Examination of application

The Director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor.

(July 19, 1952, ch. 950, 66 Stat. 801; 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.)